Supreme Court, U.S.
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No. 96-1215

In The

Supreme Court of the United States

October Term, 1996

JILL GAVLE,

Petitioner,

v.

LITTLE SIX, INC., A FOREIGN CORPORATION d/b/a MYSTIC LAKE CASINO, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Minnesota Supreme Court

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Respondent Little Six, Inc. ("LSI") is a wholly-owned tribal entity of the Shakopee Mdewakanton Sioux (Dakota) Community ("Community"), a sovereign Indian tribe, federally-recognized and organized under the provisions of the Indian Reorganization Act of 1934 (48 Stat. 984) 25 U.S.C. § 476, *et seq.* LSI operates the Shakopee Community's gaming enterprises for the welfare of the Shakopee Community and its members. All of the Shakopee Community's gaming operations are conducted on trust land, as required by the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 ("IGRA").

Petitioner was employed by LSI as a security guard from March, 1992 to February, 1993. (Petitioner's App., 70). Petitioner's job duties were primarily performed at the Shakopee Community's gaming enterprises on federal trust land, and none of the harms which Petitioner alleges to have been caused by LSI took place off of the trust land. *Id.*

Petitioner commenced her action in Scott County District Court in the State of Minnesota. The District Court dismissed the action, holding that LSI, as an entity of the Shakopee Community, was protected by the Shakopee Community's sovereign immunity from suit, and finding that LSI had not waived that immunity. (Petitioner's App., 55).

The District Court's decision was appealed by Petitioner to the Minnesota Court of Appeals, which affirmed the District Court's decision. (Petitioner's App., 30); *Gavle v. Little Six, Inc.*, 534 N.W.2d 280 (Minn. Ct. App. 1995).

The Minnesota Supreme Court subsequently granted Petitioner's request for review.

The Minnesota Supreme Court issued its opinion on October 31, 1996, holding that because LSI is so integrally intertwined with the Shakopee Community's governing structure, it is protected by the Shakopee Community's sovereign immunity from suit, and that LSI had not waived its immunity. (Petitioner's App., 1); *Gavle v. Little Six, Inc.*, 555 N.W.2d 284 (Minn. 1996).

ARGUMENT

I. THE MINNESOTA SUPREME COURT CORRECTLY FOUND THAT LITTLE SIX, INC. IS PROTECTED BY SOVEREIGN IMMUNITY FROM SUIT.

Petitioner argues that the decision of the Minnesota Supreme Court, that LSI is protected by the Shakopee Community's sovereign immunity from suit for off-reservation conduct, and that LSI has not waived its immunity, is in conflict with governing precedent. Petitioner is mistaken; the precedent upon which the Minnesota Supreme Court relied soundly supports the conclusion that tribal sovereign immunity extends to tribal entities, even for acts outside the borders of the tribe's reservation, and that LSI has not waived its immunity.

A. Tribal sovereign immunity from suit protects tribal entities such as LSI for off-reservation commercial activities.

This Court has stated that an Indian tribe's privileges and immunities do not turn on the particular form in which it chooses to conduct its business, and has treated tribal business enterprises as possessing the same immunities as the tribe itself, *Central Machinery Co. v. Arizona Tax Comm'n*, explaining that "it is irrelevant that the sale was made to a tribal enterprise rather than to the tribe itself." 448 U.S. 160, 164 n.3 (1980) (internal citations omitted). There is no distinction between LSI and the Shakopee Community that operates to divest LSI of its sovereign immunity from suit.

1. Tribal sovereign immunity protects tribal entities from suit.

As governments pre-dating the United States, Indian tribes possess "inherent powers of a limited sovereignty which has never been extinguished," *United States v. Wheeler*, 435 U.S. 313, 322 (1978), *citing* Felix Cohen, *Handbook of Federal Indian Law*, 122 (1945), and continue to possess "the common-law immunity from suit traditionally enjoyed by sovereign powers." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978). Tribal sovereign immunity shields a tribe's agencies, instrumentalities and enterprises from suit absent a clear and unequivocal waiver of that immunity. *Ramey Constr. Co. v. Apache Tribe of the Mescalero Reservation*, 673 F.2d 315, 320 (10th Cir. 1982). These principles have been applied to tribally-chartered housing authorities, *Weeks Constr. Inc. v. Oglala*

Sioux Housing Auth., 797 F.2d 668, 670-1 (8th Cir. 1986), and tribally-owned businesses. *In re Greene v. Richardson*, 980 F.2d 590 (9th Cir. 1992), *cert. denied*, 114 S. Ct. 681 (1994).

Furthermore, like other sovereigns, Indian tribes have the power to cloak corporations which they create, own, and manage with the mantle of sovereign immunity. *Namekagon Dev. Co., Inc. v. Bois Fort Reservation Housing Auth.*, 395 F. Supp. 23, 26 (D. Minn. 1974), *aff'd*, 517 F.2d 508 (8th Cir. 1975) (Applying law of federal corporations to resolve question of tribal corporation's immunity from suit) (internal citations omitted). In fact, the bulk of authority, both federal and state, provides that tribal corporations *are* protected by tribal sovereign immunity from suit.[1]

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[1] *See, e.g., In Re Ransom v. St. Regis Mohawk Educ. & Community Fund, Inc.*, 658 N.E.2d 989 (N.Y. 1995) (holding that sovereign immunity of the St. Regis Mohawk Tribe extended to the St. Regis Mohawk Education and Community Fund, a non-profit, state-chartered corporation); *Altheimer & Gray v. Sioux Mfg. Corp.*, 983 F.2d 803 (7th Cir.), *cert. denied*, 114 S. Ct. 621 (1993) (holding that tribal sovereign immunity protected manufacturing corporation incorporated by the Fort Totten Sioux Tribe under tribal law, but finding the tribe had waived that immunity); *Rosebud Sioux Tribe v. A & P Steel, Inc.*, 874 F.2d 550 (8th Cir. 1989) (holding that tribal corporation was protected by sovereign immunity, but finding waiver of immunity in contract); and *Sac & Fox Nation v. Hanson*, 47 F.3d 1061 (10th Cir.), *cert. denied sub. nom. Willingham v. Sac & Fox Nation*, 116 S. Ct. 57 (1995) (holding that tribal corporation is protected by the tribe's sovereign immunity from suit, even for off-reservation economic activity).

2. Little Six, Inc. is controlled by the Shakopee Community's government, and cannot function as a separate entity.

Petitioner does not dispute that Indian tribes are protected by sovereign immunity from suit, yet would deny that protection to LSI, arguing that LSI is a "separate and distinct corporation." (Petition, 15). Yet the Minnesota Supreme Court determined that "there is simply no way to avoid the fact that LSI is different from other corporations," concluding that "it is integrally related to the . . . Shakopee Community" as to be indistinguishable from it. *Gavle*, 555 N.W.2d at 295-296. In reaching its conclusion, the Minnesota Supreme Court examined the purposes for which LSI was formed, the extent to which LSI is linked to the Shakopee Community's governing structure, and whether federal policies intended to promote Indian tribal autonomy are furthered by the extension of immunity to the business entity. *Id.* at 294. The Minnesota Supreme Court determined all three factors weighed in favor of LSI's sovereign immunity protection.

As this Court determined in *California v. Cabazon Band of Mission Indians*, Indian gaming is a means by which Indian "tribes can further their economic self-sufficiency, the economic development of reservations and tribal self-determination." 480 U.S. 202, 217-18 n.21 (1987). Further, when Congress enacted the IGRA, it did so "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702. LSI was formed for a uniquely governmental purpose: to operate the Shakopee

Community's gaming enterprises for the express purposes of "improv[ing] the business, financial or general welfare of the Corporation, the Members of the Corporation, and the Shakopee Community." (App. 2). Both the general and specific purposes for which LSI was formed require finding that it is a tribal entity, possessing sovereign immunity from suit.

LSI is not, as the Petitioner implies, a management entity separate from the Shakopee Community. (Petition, 19 n.7). LSI is *wholly-owned* by the Shakopee Community. (App. 32-33). All members of the Shakopee Community's General Council, its governing body, have voting rights contemporaneous with voting rights as a member of the General Council (App. 3). Shakopee Community Members' voting rights may not be transferred, nor may Members transfer their beneficial interests in LSI. (App. 4, 33).

Further, the manner in which LSI must act to fulfill the purposes for which it was formed, and the matters over which the General Council has authority, demonstrate the extent to which LSI is a part of the Shakopee Community government. The General Council holds authority to approve the encumbrance of any and all interests in real trust property and to approve the purchase of real trust property. (App. 30). The General Council must approve the annual budget (App. 75), expenditures in excess of the levels in the annual budget (App. 75), and the sale of corporate assets with an aggregate value in excess of $500,000. (App. 75). Further, all net profits and dividends must be paid monthly to the Community.

Not only does the General Council have financial control over LSI, but it also has control over corporate structure. The General Council must approve the formation of a partnership with another corporation, the creation of a joint venture, the purchase of another existing corporation, merger with another corporation, and the enactment of amendments to the Articles of Incorporation or the Corporate Bylaws. (App. 75).

Further, LSI's Board of Directors must include the Shakopee Community's Business Council, which is analogous to the executive branch of the federal government. (App. 8). And ultimate control over LSI clearly resides with the Shakopee Community's governing body, the General Council, for it can require the Board of Directors to take any action deemed in the Shakopee Community's best interest. (App. 75-76).

Therefore, LSI is an entity of the Shakopee Community which exercises governmental powers for the purposes of conducting gaming, and is not a separate, independent corporation as Petitioner implies. LSI is operated to promote the economic independence, self-sufficiency, and self-government of the Shakopee Community. It is beyond question that the Shakopee Community governs LSI, manages LSI, and controls all aspects of LSI's existence.

3. The Shakopee Community's sovereign immunity protects Little Six, Inc. from suit.

Because LSI shares the sovereign immunity of the Shakopee Community, an explicit affirmative act is necessary to waive the Shakopee Community's immunity from

suit; it need not so act to preserve it. The Shakopee Community's law specifically permits the Shakopee Community to vest its sovereign immunity in a corporation that is both chartered and wholly-owned by the Shakopee Community. (App. 29). The Ordinance recites, in pertinent part

> A corporation wholly owned by the Community may assume any or all of the Community's rights, privileges and immunities *(including without limitation, sovereign immunity) . . . to the same extent that the Community would have such rights, privileges and immunities if it engaged in the activities undertaken by the Corporation.*

Id. (emphasis added). Pursuant to that authority, the Community, in the Articles of Incorporation that it issued to LSI, explicitly conferred its sovereign immunity on that enterprise. The extension of the Community's immunity to LSI is set out in Article 3 of the company's Articles of Incorporation, which recites:

> 3.1 *Sovereign Immunity of Corporation.* The Shakopee Mdewakanton Sioux Community confers on the Corporation *all of the Community's rights, privileges, and immunities concerning* federal, state and local taxes, regulation, and jurisdiction, and *sovereign immunity from suit,* to the same extent that the community would have such rights, privileges and immunities if it engaged in the activities undertaken by the corporation.

(App. 2) (emphasis added).

Tribes are clearly free to choose the forms in which they wish to conduct their business. *Mescalero Apache*

Tribe v. Jones, 411 U.S. 145, 157 n.13 (1973). As a sovereign, the Shakopee Community is free to choose the form in which it conducts *its* business, including its gaming activities. As a sovereign, the Shakopee Community has the power to vest its immunity from suit upon an entity that it owns and which functions to promote the Community's welfare through gaming. Little Six shares the Shakopee Community's immunity from suit.

4. The Shakopee Community's sovereign immunity from suit extends to off-reservation commercial activity.

The Shakopee Community's sovereign immunity does not stop at its reservation borders, for tribes are immune from suit for commercial activities which arise inside *and outside* of Indian country.[2] In *Sac & Fox Nation v. Hanson*, the Sac and Fox Nation sued the state of Oklahoma to prohibit it from enforcing injunctions

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[2] While the locus of the harm should not be the dispositive factor in determining the extent of sovereign immunity protection afforded Indian tribes and the entities through which they conduct their affairs, this Court should note that Petitioner can point to nothing in the record of the proceedings below that establishes that LSI acted off the Shakopee Community's trust land in any way that even allegedly harmed Petitioner. While Petitioner alleges defendant Prescott acted off the Shakopee Community's trust lands in ways that harmed her, there is nothing of record that establishes Prescott's acts as those of either the Shakopee Community or LSI. Consequently, much of Petitioner's argument is entirely beside the point, for to the extent that there has been no activity harmful to Petitioner off of trust lands, any discussion of tribal off-reservation protection from sovereign immunity is superfluous.

against it in state court in matters in which the Nation was a third-party defendant. 47 F.3d 1061. Oklahoma claimed that "the Nation [was] not entitled to sovereign immunity because the commercial activity at issue took place outside the Nation's reservation." *Id.* at 1064. The Court found that the location of the commercial activity was not determinative. *Id.* It concluded that "[w]ithout an explicit waiver, the Nation is immune from suit in state court – even if the suit results from commercial activity occurring off the Nation's reservation." *Id.* at 1065.

The Ninth Circuit upheld the principle that tribal extra-territorial immunity is still the rule of law, even where a tribe is engaged in off-reservation commercial activity, and that absent an express, unequivocal waiver of a tribe's sovereign immunity from suit, an exercise of subject matter jurisdiction by *any* court is precluded. *In re Greene*, 980 F.2d 590. LSI has not waived its sovereign immunity from suit, and its sovereign immunity protects it from suit, even for off-reservation acts.

B. Decisions regarding the extent of tribal immunity from taxation are an insufficient basis upon which to abrogate tribal sovereign immunity.

Like the Shakopee Community's sovereign immunity, LSI's sovereign immunity from suit extends to its activities both on and off of the Shakopee Community's lands. Yet Petitioner relies on *Mescalero Apache*, 411 U.S. 145, and *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. ___, 115 S. Ct. ___, 132 L.Ed.2d 400 (1995), to argue that LSI is not entitled to sovereign immunity for off-reservation activities. (Petition 5-9). Petitioner's reliance is misplaced,

for tribal immunity from state taxation, and tribal sovereign immunity from suit are distinguishable, and none of the cases cited by Petitioner supports abrogating tribal sovereign immunity.

The difference between tribal tax immunity and tribal sovereign immunity is best illustrated by *Oklahoma Tax Comm'n v. Potawatomi Tribe*, 498 U.S. 505 (1991). There, the Supreme Court found that the tribe was not immune from the imposition of an Oklahoma cigarette tax on cigarettes sold by the tribe in its convenience store. *Id.* But the court still held that sovereign immunity

> prevented the state from collecting the tax on sales to tribal members and from suing the Tribe to collect amounts due. Even though tribal sovereignty did not prevent the state from imposing a duty to collect the tax on the Tribe, tribal immunity prevented the state from suing to collect the amounts due.

Potawatomi, 498 U.S. at 512.

Further, the presumption that applies in the context of taxation is the reverse of that which applies in the context of tribal sovereign immunity. In the context of taxation, "this Court has repeatedly said that tax exemptions are not granted by implication . . . . It has applied that rule to taxing acts affecting Indians as to all others . . . . " *Mescalero Apache*, 411 U.S. at 156. Consequently, unless there is an *express exemption* that is provided by federal law or a treaty, state tax for off-reservation activity will apply to sales made by an Indian tribe. Felix Cohen, *Handbook of Federal Indian Law*, 430 (1982 ed.).

The presumption in the context of sovereign immunity, however, is the reverse. "Indian tribes have always been considered to have an immunity from suit," *Namekagon Dev.*, 517 F.2d at 510, and tribal sovereign immunity is presumed to protect the tribe from suit unless waived either by the tribe itself or by Congress, *Potawatomi*, 498 U.S. 505, even for commercial activity outside Indian country. *Sac & Fox Nation*, 47 F.3d 1061. Further, in order to overcome the presumption that sovereign immunity protects a tribal entity from suit, a party must make a showing that a tribe has *unequivocally expressed* a waiver of its sovereign immunity from suit, for this Court has consistently held that a waiver of sovereign immunity "cannot be implied but must be unequivocally expressed." *Santa Clara Pueblo*, 436 U.S. at 58; *United States v. Testan*, 424 U.S. 392, 399 (1976).[3] Further, "any waiver of immunity is to be interpreted liberally in favor of the tribe and restrictively against the claimant." *S. Unique Ltd. v. Gila River Pima-Maricopa Indian Community*, 674 P.2d 1376, 1381 (Ariz. App. 1983), *citing Maryland Casualty Co. v. Citizens Nat'l. Bank of West Hollywood*, 361 F.2d 517, 521 (5th Cir.), *cert. denied*, 385 U.S. 918 (1966).

State taxes are not at issue here, and the cases cited by Petitioner are an insufficient basis upon which to abrogate tribal sovereign immunity. There has been no

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[3] Petitioner also cites to *Organized Village of Kake v. Egan*, 369 U.S. 60 (1962), in support of her argument, but that case is entirely inapposite. In *Kake*, the issue was the authority of the state of Alaska to regulate off-reservation fishing by members of an Alaskan Native Village, and the case did not address sovereign immunity from suit.

express, unequivocal waiver of LSI's sovereign immunity from suit, and even though Petitioner can cite to nothing in the record below which substantiates that LSI committed any act off trust land harmful to Petitioner, if LSI had, LSI's sovereign immunity would protect it from this suit, for its sovereign immunity extends to off-reservation acts.

C. The Minnesota Supreme Court's decision regarding sovereign immunity of tribal corporations is in accord with decisions of both state and federal courts.

The decision of the Minnesota Supreme Court is in accord with the decisions of both federal and state courts, yet, as a basis for grant of the Petition, Petitioner attempts to rely on a purported conflict between the federal circuit courts and state courts regarding the extent of off-reservation protection afforded to tribal commercial enterprises by sovereign immunity. (Petition, 14-21). There is no conflict between state and federal court decisions, as they pertain to this case, which requires resolution by this Court.

Virtually all state courts addressing the issue have held, as have most federal courts, that absent an unequivocally expressed waiver, a proprietary entity established by a tribal government is protected by the tribe's sovereign immunity for commercial activities taking place on the tribe's reservation, whether the claim is based on contract or negligence theory. *E.g., S. Unique, Ltd.*, 674 P.2d 1376. Sovereign immunity has also been held to prevent suit in a state court for a contract claim involving a tribal corporation, *Robles v. Shoshone-Bannock Tribes*, 867

P.2d 134 (Idaho 1994) (holding that sovereign immunity protected tribal corporation unless expressly waived), and to a non-profit corporation chartered pursuant to the laws of the District of Columbia, and registered with the state of New York to conduct business off the reservation. *Ransom*, 658 N.E.2d 989. Similarly, in *DeFeo v. Ski Apache Resort*, the New Mexico Court of Appeals held that the tribe was immune from the suit of a guest at its ski resort for injuries allegedly sustained due to the tribe's negligence. 904 P.2d 1065 (N.M. Ct. App. 1995). The Minnesota Supreme Court's decision is in full accord with these decisions.

The purported conflict between state and federal law on this issue stems from the fact that federal circuit courts addressing the issue have held that off-reservation commercial activity by Indian tribes is protected by sovereign immunity from suit, *In re Greene*, 980 F.2d 590,[4] while the supreme courts of two states have held that off-reservation commercial activity of an Indian tribe is not protected by sovereign immunity from suit. The New Mexico Supreme Court in *Padilla v. Pueblo of Acoma*, 754 P.2d 845 (N.M. 1988), *cert. denied*, 490 U.S. 1028 (1989), relying on the reasoning in *Nevada v. Hall*, 440 U.S. 410 (1979) (holding that Nevada could be sued in California courts), held the Pueblo could be sued in New Mexico courts. The *Padilla* court reasoned that because New Mexico could be sued to enforce a contract, and because the Pueblo was

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[4] *See also Romanella v. Hayward*, 933 F. Supp. 163 (D. Conn. 1996) (holding that tribe's sovereign immunity protected it from tort based claim resulting from off-reservation commercial activity).

engaged in off-reservation commercial activity, it was not protected by sovereign immunity from a contract-based claim. *Padilla* has been soundly criticized.[5]

The Oklahoma Supreme Court in *Hoover v. Kiowa Tribe of Oklahoma*, 909 P.2d 59 (Okla. 1995), and in *Aircraft Equip. Co. v. Kiowa Tribe of Oklahoma*, 921 P.2d 359 (Okla. 1996), also held that Indian tribes engaged in off-reservation commercial activity were not protected by sovereign immunity from suit, relying on the reasoning of *Padilla*. These cases are not a basis for granting the Petition, for the sovereign immunity of Indian tribes is not a matter of state law. Even the *Padilla* court noted, "[a]bsent federal authorization, tribal immunity is privileged from diminution by the states." *Padilla*, 754 P.2d 847. *Padilla* is of

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[5] *E.g.*, *In re Greene*, 980 F.2d at 595 ("The [*Padilla*] court should have looked at the scope of tribal immunity under federal law, rather than the extent of comity afforded under state law."); *Romanella v. Hayward*, 933 F. Supp. at 167 ("The court finds the reasoning of *In re Greene*, and its criticism of *Padilla*, persuasive and holds that the Tribe's immunity from suit extends to commercial activities occurring off the reservation."); *Elliott v. Capital Int'l. Bank & Trust*, 870 F. Supp. 733, 734 (E.D. Tex. 1994) ("The court's research has led it to the conclusion that the *Padilla* approach is generally rejected outside the courts of that state."); and *DeFeo v. Ski Apache Resort*, 904 P.2d at 1069 ("[W]e [ ] recognize that, in concluding that business conducted by a sovereign Indian tribe off its reservation is not clothed with immunity from suit in state courts, *Padilla* appears to conflict with the Tenth Circuit's more recent holding in *Sac & Fox Nation*, which clearly stated that the location of the commercial activity was not determinative and held that an Indian tribe was immune from suit in state courts 'even if the suit results from commercial activity occurring off the [Indian tribe's] reservation.' ")

limited utility to Petitioner, for it is clearly a minority position, adhered to only by Oklahoma, for even the New Mexico courts have signalled that they may be prepared to re-examine the validity of the holding there. *DeFeo v. Ski Apache Resort*, 904 P.2d at 644.

In contrast, Arizona has held that absent an unequivocally expressed waiver, tribes are protected by sovereign immunity for contract or tort claims based on off-reservation commercial activity. *Morgan v. Colorado River Indian Tribe*, 443 P.2d 421 (Ariz. 1968). In *Morgan*, the Arizona Supreme Court held that Indian tribes cannot be subject to the jurisdiction of state courts except where there has been an express waiver of the tribe's sovereign immunity from suit. 443 P.2d 421 (wrongful death action against the Tribe, as the owner and operator of the resort located entirely off the Tribe's reservation and catering to an almost exclusively non-Indian clientele, dismissed based on absence of waiver of the Tribe's sovereign immunity from suit). The *Morgan* Court said "[i]t is clear that Congress alone must determine the extent to which immunities afforded tribal status are to be withdrawn." *Id.* at 424.

Federal circuit courts have also held that off-reservation commercial activity by a corporate entity of the tribe is protected by tribal sovereign immunity from suit. *Sac & Fox Nation*, 47 F.3d 1061.[6] And in addition to the case at bar, other state supreme court decisions concur with the federal decisions regarding the extent to which tribal

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[6] *See also Elliott v. Capital Int'l. Bank & Trust*, 870 F. Supp. 733 (tribally-chartered bank operating off-reservation protected by tribe's immunity from suit).

sovereign immunity protects a tribally-owned corporation for off-reservation activity. The Washington State Supreme Court held that the tribe's sovereign immunity protected an operating division of a corporate entity chartered under the tribe's constitution, and stated that "[i]t is settled that a waiver of sovereign immunity cannot be implied but must be unequivocally expressed," and that absent such an unequivocally expressed waiver, off-reservation activity did not subject the tribe to the jurisdiction of the state courts. *North Sea Products, Ltd. v. Clipper Seafoods Co.*, 595 P.2d 938, 941 (Wash. 1979). The case was accordingly dismissed.

The only state supreme court opinion declining to extend tribal sovereign immunity protection to off-reservation commercial activity by a tribally-chartered corporation is not inconsistent with the decision at issue here. In *Dixon v. Picopa Constr. Co.*, the Arizona Supreme Court declined to extend tribal sovereign immunity to the off-reservation commercial activity of Picopa Construction Co. because the construction company was deemed not to be an economic organization subordinate to the tribal government. 772 P.2d 1104 (Ariz. 1989). Even though the "subordinate economic entity" test established by the *Dixon* court is clearly a minority interpretation, LSI meets it, and is immune from Appellant's claims, for all LSI's activities are directed at promoting Community interests, and, pursuant to Community decisional law, are actions of the tribal government. As the *Gavle* court correctly concluded, there is simply no way to avoid the fact that LSI *is* subordinate to the Community government, and is so integrally related to the Shakopee Community that it is

a part of the Community's government, protected by the Community's sovereign immunity from suit.

II. NO COURT HAS EVER HELD THAT REGISTRATION AS A FOREIGN CORPORATION IS A WAIVER OF SOVEREIGN IMMUNITY.

Petitioner concedes that to validly waive its sovereign immunity from suit, LSI must do so unequivocally, but she then suggests that LSI has waived its immunity through registration as a foreign corporation with the State of Minnesota. Because no court has ever held that registration as a foreign corporation is a waiver of sovereign immunity, there is no need for the Court to accept review on this issue. Moreover, to the extent that Petitioner is asking this Court to interpret Minnesota law, the Court is without jurisdiction to consider the matter.

Petitioner argues that as a matter of Minnesota law, LSI consented to be bound by the laws of Minnesota when it registered to do business as a foreign corporation. Because this Court is restricted by the United States Constitution from hearing issues arising solely as a matter of state law, however, Petitioner cannot obtain review on that issue. U.S. Const. art. III.

Petitioner's other argument on this point is that the Minnesota Supreme Court's conclusion that the consent to service of process was not an unequivocally expressed waiver of sovereign immunity contradicts federal case law. (Petition, 21). Specifically, Petitioner claims that the Minnesota court's finding that consent to service of process was not an abrogation of all affirmative defenses conflicts with two Alaska cases finding that an agreement

to be bound by arbitration is a waiver of sovereign immunity. (Petition, 28), *citing Hydaburg Coop. Assoc. v. Hydaburg Fisheries*, 826 P.2d 751, 754 (Alaska 1992), and *Neana Fuel Co., Inc. v. Native Village of Venetie*, 834 P.2d 1229, 1233 (Alaska 1992). In those cases, she argues, the Alaska Supreme Court implicitly concluded that all affirmative defenses had been waived by entering the agreement. What Petitioner fails to recognize is that agreeing to enter arbitration is wholly distinct from consenting to service of process.

By agreeing to arbitration, a party is agreeing to a form of *dispute resolution*. (And agreeing to have one's dispute resolved by a particular forum could arguably be characterized a waiver of sovereign immunity.) By contrast, consenting to service of process is simply agreeing that a particular forum will have personal jurisdiction over the party giving consent. *Knowlton v. Allied Van Lines, Inc.*, 900 F.2d 1196, 1199 (8th Cir. 1990). It could be nothing more, for while "[a] party beyond the reach of a federal court's process may voluntarily submit to its jurisdiction over his person, . . . he cannot create subject-matter jurisdiction. . . . " *Finley v. United States*, 490 U.S. 545, 559 (1989).

Petitioner suggests that every party who signs a Minnesota consent to service of process creates subject matter jurisdiction in the Minnesota courts. According to Petitioner, LSI "waived all *jurisdictional defenses*" by completing the consent to service of process. (Petition, 26). Petitioner's argument is self-defeating, because not all jurisdictional defenses *can* be waived: "[N]o action of the parties can confer subject-matter jurisdiction on a federal court." *Insurance Corp. v. Compagnie des Bauxites*, 567 U.S.

694, 702 (1982). *See also North Central Services, Inc. v. Eastern Communications, Inc.*, 379 N.W.2d 708, 710 (Minn. Ct. App. 1986) ("Unlike subject matter jurisdiction, which can never be waived, personal jurisdiction may be given by consent of the parties.").

Petitioner's final argument is that the Minnesota Supreme Court incorrectly relied on *Ransom*, 658 N.E.2d at 993. In *Ransom*, the tribally-owned Fund's corporate charter incorporated the District of Columbia's Non-Profit Corporation Act. The Act states that a corporation formed thereunder "shall have power . . . [t]o sue and be sued, complain and defend, in its corporate name. . . . " The corporate charter did not, however, contain any express waiver of sovereign immunity. The petitioners urged the New York Court of Appeals to find that incorporation under the District of Columbia's Non-Profit Corporation Act created consent to suit in a state court. A unanimous Court of Appeals squarely rejected this contention, and held that "the mere fact that a tribal corporation, by statute, has designated an agent for service of process or is empowered to 'sue and be sued' does not automatically subject that corporate entity to any court's jurisdiction where jurisdiction is otherwise lacking." *Id.* at 995. Petitioner argues that because the Minnesota Court found that it had subject matter jurisdiction, its reliance on *Ransom* was misplaced. But the next sentence of the *Ransom* opinion makes clear that the "where jurisdiction is otherwise lacking" language referred to the lack of a waiver from suit: "In other words, the general powers provisions of the corporation statutes are not self-executing, and express n[illegible]tion of the power to sue

and be sued and submission to a particular forum by official tribal action is required." *Id.*

Consent to service of process is not a submission to a particular forum. *Snow v. Quinalt Indian Nation*, 709 F.2d 1319, 1322 (9th Cir. 1983), *cert. denied*, 467 U.S. 1214 (1984). Even if this Court had jurisdiction to consider whether under Minnesota law consent to service was a consent to state court jurisdiction, the result would be "perfectly clear" because "an act of a state legislature cannot be allowed to interfere with the guardianship over [Indians] which the United States has assumed, since Congress alone must determine the extent to which the immunities and protection afforded by tribal status are to be withdrawn." *Haile v. Saunooke*, 246 F.2d 293, 297 (4th Cir. 1957) (holding tribe immune from suit for personal injury suit arising from collapse of bridge on tribe's reservation). Petitioner's argument regarding LSI's consent to service of process is much ado about nothing. No split of authority exists. Simply put, Petitioner was unable to demonstrate that *any court* has *ever held* that consent to service of process is an unequivocally expressed waiver of tribal sovereign immunity.

III. IN THE ABSENCE OF A TRIBAL WAIVER, ONLY CONGRESS CAN ABROGATE TRIBAL SOVEREIGN IMMUNITY, AND IT HAS NOT DONE SO IN THIS CASE.

Petitioner's primary argument for granting certiorari is policy-based. She contends that it is unfair that an Indian tribe has the authority to confer its governmental

sovereign immunity to its sub-entities, particularly corporations. (*E.g.*, Petition, 7-10). How, she asks, can it be that Congress requires foreign sovereigns to be subject to suit for commercial activity but has not done so for Indian tribes? It is not this Court's province, however, to answer a policy question such as Petitioner poses.

Petitioner goes so far as to argue that the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1602 *et seq.*, applies to Indian tribes because there is no exception for "sovereign Indian tribes or corporations owned by Indians under the Act." (Petition, 10).[7] Though some courts have, as Petitioner notes, expressed doubts about the *policy* behind the doctrine of sovereign immunity, no Court has ever held the that the FSIA applies to Indian tribes or their corporations. In fact, one Circuit Court of Appeals used the FSIA to demonstrate why courts have no authority over tribal sovereign immunity.

In *In re Greene*, the Ninth Circuit noted that "[f]rom Congress' adoption of the [FSIA], we can imply at least two things: a. It takes an act of Congress to effectively limit the sovereign immunity of a foreign sovereign; and b. Congress knows how to limit the sovereign immunity of others when it wants to." 980 F.2d at 594 n.3. Because no act of Congress has limited the sovereign immunity of

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[7] The absurdity of Petitioner's argument in this regard is demonstrated by the plain language of the U.S. Const., art. I, § 8, which distinguishes Indian tribes from foreign nations when it sets forth that Congress shall have authority to "regulate commerce with Foreign Nations . . . and with Indian tribes." Congress enacted the FSIA as an exercise of its authority to regulate commerce with foreign nations. It did not invoke its authority to regulate commerce with Indian tribes.

the Shakopee Community or LSI in this instance, no court could find that LSI is unprotected from Petitioner's suit in state court, no matter what its views on the *policy* behind tribal sovereign immunity.

A. All courts agree that absent an express tribal waiver of sovereign immunity, only an Act of Congress can waive tribal immunity from suit.

For more than one hundred years, state and federal courts have recognized that only Congress can abrogate tribal sovereign immunity. In an action to recover attorney's fees from the Choctaw Nation, the Eighth Circuit noted that "[w]hile the Nation has many of the attributes of the political unit which constitutes the civil and self-governing community called a 'State' or a 'Nation,' it is not a sovereign state, but it is a domestic and dependent state, subject to the jurisdiction and authority of the United States. Being a domestic and dependent state, the United States may authorize suit to be brought against it." *Thebo v. Choctaw Tribe of Indians*, 66 F. 372, 374 (8th Cir. 1895). Forty-five years later, this Court reaffirmed Congress's authority: "These Indian Nations are exempt from suit without Congressional authorization." *United States v. United States Fidelity & Guar.*, 309 U.S. 506, 512 (1940).

This Court has consistently upheld tribal sovereign immunity since then, and has continuously recognized that absent a tribal waiver, only Congress can abrogate tribal sovereign immunity. Indeed, as the Court noted, "Congress has always been at liberty to dispense with such tribal immunity or to limit it." *Potawatomi*, 498 U.S.

at 510. In this Court's seminal case on tribal sovereign immunity, the Court held that without explicit Congressional authorization, federal courts could not hear disputes arising under the Indian Civil Rights Act, 25 U.S.C. § 1301 *et seq.* "Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers. This aspect of tribal sovereignty is subject to the superior and plenary control of Congress. But 'without Congressional authorization,' the 'Indian Nations are exempt from suit.' " *Santa Clara Pueblo,* 436 U.S. at 58 (1978) (citations omitted).

Given Congress's plenary authority in this area, the Minnesota Supreme Court reached the only possible result in this case – it found LSI immune from suit. As the Alaska Supreme Court concluded, "Because of the supremacy of federal law, [state courts] are bound to recognize the doctrine of tribal sovereign immunity, even if [they] were to find valid public policy reasons to hold it inapplicable. . . . " *Atkinson v. Haldane,* 569 P.2d 151, 163 (Alaska 1977) (finding Indian community immune from suit in wrongful death action). Even the state cases on which Petitioner relies have recognized that in the absence of a tribal waiver, Congress alone has the authority to undo tribal sovereign immunity. For example, in *Padilla,* the New Mexico Supreme Court acknowledged that "[w]here a tribe's sovereign immunity obtains, it is well-settled and binding upon this Court that only under congressional consent of an effective waiver may a state

court exercise jurisdiction over a recognized tribe." 754 P.2d at 847.[8]

Because "[i]t is clear that Congress alone must determine the extent to which immunities afforded tribal status are to be withdrawn," *Morgan*, 443 P.2d at 424, even if this Court were to agree with Petitioner's policy arguments regarding tribal sovereign immunity, granting certiorari in this case would be of no help to Petitioner. Congress has not abrogated LSI's immunity in this instance.

B. Congress has not abrogated LSI's sovereign immunity from suit.

To paraphrase the Ninth Circuit, Congress knows how to limit the sovereign immunity of Indian tribes when it wants to. *In re Greene*, 980 F.2d at 594. For example, in order for Indian tribes to obtain confidential information regarding oil or gas royalty management, Congress requires that an Indian tribe waive "sovereign immunity by express consent for wrongful disclosure" of the information by the tribe. 30 U.S.C. § 1733 (1996). And in order to solve land disputes between the Navajo and Hopi Tribes, Congress authorized each tribe "to commence or defend in the District Court an action against the other tribe and any other tribe of Indians" claiming interest in the disputed lands. 25 U.S.C. § 640d-7 (1996).

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[8] As Petitioner points out, the New Mexico Court found that Pueblo of Acoma was not immune from suit in *Padilla* because it was engaged in commercial activity off the Reservation. As discussed in note 5, *supra*, that result has been widely criticized.

In this instance, however, Congress has neither required nor effected a waiver of LSI's immunity.

Those opposed to the doctrine of tribal sovereign immunity have pleaded with Congress on several occasions to do away with it, either partially or in full. In the wake of the *Santa Clara Pueblo* decision, at least two bills were introduced to abrogate tribal sovereign immunity in federal courts for Indian Civil Rights Act claims. *E.g.*, S. 2747, 100th Cong. 2d Sess. (1988); S. 517, 101st Cong. 1st Sess. (1989). Congress declined to pass either of them. More recently, a waiver of tribal sovereign immunity was proposed as part of the Senate Interior Appropriations Subcommittee Markup of the FY 1997 Interior appropriations bill. That proposal was withdrawn before it made it to the floor of the Senate. Section 329 of Senate Interior Appropriations Committee Markup of H.R. 3662, 104th Cong., 2d Sess. (1996).

Rather than abrogating tribal sovereign immunity – which would be an abrogation of tribal sovereignty itself – Congress has consistently supported tribal self-government, and protected tribal sovereignty.[9] Indeed, this Court has

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[9] *See, e.g.*, Indian Tribal Justice Act, 25 U.S.C. § 3601, *et seq.*; Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450, *et seq.* (committing the United States to supporting and assisting Indian tribes in "the development of strong and stable tribal governments"); Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq.* (declaring that a principal goal of federal Indian policy is "to promote tribal economic development, tribal self-sufficiency, and strong tribal government"); Native American Languages Act, 25 U.S.C. § 2901, *et seq.* (recognizing "the United States policy of self-determination for Native Americans"); and Indian Trust Fund Management Reform Act

> repeatedly recognized the Federal Government's longstanding policy of encouraging tribal self-government. *See, e.g. Three Affiliated Tribes v. Wold Engineering*, 476 U.S. 877, 890 (1986); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 138 n.5 (1982); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143-144, and n. 10 (1980); *Williams v. Lee*, 358 U.S. 217, 220-221 (1959). This policy reflects the fact that Indian tribes retain "attributes of sovereignty over both their members and their territory," *United States v. Mazurie*, 419 U.S. 544, 557 (1975), to the extent that sovereignty has not been withdrawn by federal statute or treaty.

Iowa Mut. Ins. Co. v. LaPlante, 480 U.S. 9, 14 (1987) (footnote omitted). In the face of consistent Congressional support for tribal sovereignty and tribal sovereign immunity, granting certiorari here would be to no avail. Because LSI possesses sovereign immunity from suit, absent a tribal waiver, only Congress could give Petitioner the relief she seeks – a right to have her case heard in state court.

LSI hesitates to engage Petitioner in a policy debate, but must point out to the Court that the Minnesota Supreme Court's decision does not "allow off-reservation business to be conducted in the State of Minnesota (or anywhere else) with total immunity." (Petition, 19). First, as noted at the outset of this response, LSI conducts its business within Indian Country. Second, "the plaintiff is

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of 1994, 25 U.S.C. § 4001, *et seq.* (promoting tribal management of tribal funds in order to "demonstrate how the principles of self-determination can work with respect to the management of such trust funds").

free to seek a remedy in a tribal forum, if tribal law provides such a remedy." *Federico v. Capital Gaming Int'l.*, 888 F. Supp. 354, 357 (D. R.I. 1995) (noting that holding tribe was immune from suit in federal court is not the "equivalent of allowing the Tribe to abrogate unilaterally a contract."). The Shakopee Community has adopted a Tort Claims Ordinance wherein it has waived its sovereign immunity and the sovereign immunity of its corporations for tort claims brought in Tribal Court. (App. 81).[10] The Minnesota Supreme Court's decision accords the proper respect owing a sovereign tribal government in the absence of Congressional direction to the contrary, and there is no reason (nor any authority) for this Court to take up Petitioner's quest to re-write long-settled Congressional policy.

CONCLUSION

For the foregoing reasons, this Court should deny the Petition for Writ of Certiorari in this matter.

Respectfully submitted,

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[10] Petitioner's claims are time-barred under this ordinance, however. (App. 90).

ARTICLES OF INCORPORATION
OF
Little Six, Inc.

March 18, 1991

The Shakopee Mdewakanton Sioux Community, ("the Community") acting through its Business Council, hereby authorizes these Articles of Incorporation to be filed under the Shakopee Mdewakanton Sioux Community Business Corporation Ordinance for the purpose of creating a Tribal Corporation under Article V of the Constitution of the Shakopee Mdewakanton Sioux Community, as amended.

ARTICLE 1

1.0. *Name* The name of this tribally chartered Corporation is Little Six, Inc.

ARTICLE 2

2.0. *Duration* The period of existence of the Corporation shall be perpetual, except that the Corporation may have these Articles of Incorporation amended or restated or the Corporation may be dissolved in accordance with the Shakopee Mdewakanton Sioux Community Business Corporation Ordinance.

ARTICLE 3

3.0 *Purposes and Powers.* The purposes for which the Corporation is organized are to engage in any lawful act or activity for which corporations may be organized under the Shakopee

Mdewakanton Sioux Community Business Corporation Ordinance, provided that any and all activities of the Corporation shall seek to improve the business, financial or general welfare of the Corporation, the Members of the Corporation, and the Community.

3.1. *Sovereign Immunity of Corporation.* The Shakopee Mdewakanton Sioux Community confers on the Corporation all of the Community's rights, privileges and immunities concerning federal, state, and local taxes, regulation, and jurisdictional, and sovereign immunity from suit, to the same extent that the Community would have such rights, privileges, and immunities, if it engaged in the activities undertaken by the Corporation. Such immunity shall not extend to actions against the Corporation by the Community or Members of the Corporation.

3.2. *Consent to Sue and be Sued Required.* The Corporation shall have the power to sue and is authorized to consent to be sued in the Judicial Court of the Shakopee Mdewakanton Sioux Community or another court of competent jurisdiction; provided, however, that any recovery against the Corporation shall be limited to the assets of the Corporation delineated at Article 6 of these Articles of Incorporation, and that, to be effective, the Corporation must, by action of the Board of Directors, explicitly consent to be sued in a contract or other commercial document in which the Corporation shall also specify the terms and conditions of such consent. Consent to suit by the Corporation shall in no way extend to the Community, nor shall a consent to suit by the Corporation in any way be deemed a waiver of any of

the rights, privileges and immunities of the Community. Consent shall not be required for an action commenced by a Member of the Corporation to enforce the provisions of these articles or the Shakopee Mdewakanton Sioux Community Corporation Ordinance in the Judicial Court of the Shakopee Mdewakanton Sioux Community.

3.3. *Purposes and Powers.* The purposes specified herein shall be construed as both purposes and powers.

ARTICLE 4

4.0. *Ownership and Members of the Corporation.* This corporation shall issue one share of stock which shall be wholly owned by the Community; the Community shall be issued a stock certificate evidencing such ownership. Each voting member of the Community ("Member of the Corporation") shall be issued a voting rights certificate evidencing the right of that member to one vote on any Corporation matter properly before the Members at any meeting of the Corporation; the voting rights of each Member of the Corporation shall be concurrent with the voting rights of that individual as a member of the Community; all laws applicable to such voting rights as members of the Community member as a Member of the Corporation. Any other beneficial interest or right in the Corporation shall be indivisibly held by and for the Community.

4.1. *Voting Certificates and Signatures.* Every voting member of the Community, as a Member of the Corporation, shall be entitled to a certificate stating the holder's name, describing the nature of the interest evidenced by the certificate, and bearing the signature of the Clerk of Court of the

Shakopee Mdewakanton Sioux Community and the Corporate seal.

4.2. *Transfers of Interest Forbidden.* The voting rights and interests of Members in the Corporation shall be personal rights held concurrently with the right of voting membership in the Community, and shall not be subject to sale, or transfer, devise or bequest. No assignment of voting rights or interests shall be valid, but Members of the Corporation may choose to vote by written proxy, as provided by Section 40.0 of the Shakopee Mdewakanton Sioux Community Corporation Ordinance.

4.3. *Time and Place of Meetings.* Meetings of the Members of the Corporation shall be held at the principal place of business or another location within 40 miles of the Shakopee Mdewakanton Sioux Community Center or corporate office at such time and place as the Board of Directors shall fix.

4.4. *Annual Meeting.* Annual meetings of the Members of the Corporation shall be at such time and place as the Board shall determine. In the event the Board fails to set the time and date of meeting, it shall be held on the first Tuesday of each year. At such annual meeting, Members of the Corporation shall transact such business as may properly be brought before the meeting.

4.5. *Notice of Meetings.* The Board of Directors shall notify Members of the Corporation of the date, time and place of any corporate meeting, except meetings of the Board of Directors, at least 5 days before the meeting. Notice need not be given to any Member of the Corporation who signs a waiver of notice. Notices shall be deemed to be effective if placed in the U.S. Mail, with

proper first class postage affixed, at least seven calendar days in advance of the date of the meeting.

4.6. *Special Members Meetings.* Any two members of the Board of Directors may call a special meeting of the corporation for any purpose or a meeting may be requested by a majority of the Members of the Corporation.

4.7. *Manner of Meetings.* Except as otherwise provided in these Articles, the Members of the Corporation may conduct regular or special meetings through the use of any means and procedures which are proper for meetings of the General Council of the Shakopee Mdewakanton Sioux Community. Balloting may be conducted in the manner proscribed for actions of the General Council of the Shakopee Mdewakanton Sioux Community, and Members may choose to vote by written proxy, as provided by Section 40.0 of the Shakopee Mdewakanton Sioux Community Corporation Ordinance.

4.8. *Presiding Officer.* The Chairman of the Board shall preside over the Corporation meeting.

4.9. *Records.* The Corporation shall keep at its registered office books in which shall be recorded the names and addresses of every Member, the names and residences of its officers and such other records and information as may be required by law.

4.10. *Inspection of Records.* A Member of the Corporation is entitled to inspect the corporate records during the usual and customary hours of business and in a manner that will not unduly interfere with the regular conduct of the business of the Corporation. Any such information so

obtained shall not be used to the competitive detriment of the Corporation.

ARTICLE 5

5.1. *Principal Place of Business.* The Corporation shall be a resident of and maintain its corporate headquarters on the Shakopee Mdewakanton Sioux Community Reservation in Prior Lake, Minnesota, but may conduct its business activities any place in or outside of the United States. The Corporation may have such other offices, either within or without the Shakopee Mdewakanton Sioux Community Reservation as the business of the Corporation may require from time to time.

5.2. *Mailing Address and Registered Agent.* The mailing address of the corporation's initial registered office is 2330 Sioux Trail N.W., Prior Lake, Minnesota, and the name of the initial registered agent at this address is Leonard Prescott.

ARTICLE 6

6.0. *Assets.* Subject to the contractual and sovereign rights of others, including the Shakopee Mdewakanton Sioux Community, the Corporation shall have as its corporate assets, and the authority to acquire, manage, own, use, pledge, encumber, or otherwise dispose of, the following:

6.1. All funds which the Corporation may acquire by grant, gift, loan or other means.

6.2. All interests in real and personal property, whether of a tangible or intangible nature, which the Corporation may acquire by grant, gift, loan, purchase, lease or other means.

6.3. All earnings, interest, dividends, accumulations, contract rights, claims and other proceeds arising from the above listed assets.

ARTICLE 7

7.0 *Directors.*

7.1 *General Powers.* The business and activities of the Corporation shall be managed by the Board of Directors.

7.2 *Duties and Powers.* The Board of Directors is hereby vested with all powers necessary to carry out the purposes of the Corporation and shall have control and management of the business and activities of the Corporation. The Directors shall in all cases act as a board. The Directors may adopt such rules and regulations for the conduct of their meetings and the management of the Corporation as they may deem proper, not inconsistent with the Shakopee Mdewakanton Sioux Community Business Corporation Ordinance and other tribal laws, or these Articles of Incorporation.

7.3 *Election, Number and Tenure.* Subject to the provisions of Section 7.5 of these Articles, which shall otherwise control, the Board of Directors established by the Articles of Incorporation shall consist of the three members of the Shakopee Mdewakanton Sioux Community Business Council, and no more than four (4) additional members, elected by a majority of the Board, for a maximum total of (7) seven. Notices of the election of any Director shall be sent by first class mail to the Members of the Corporation within 2 business days of the election.

7.31 The election of each additional member of the Board shall be subject to recall by a majority of all of the Members of the Corporation within 15 days of the election of the Director by the Board. Such recall election shall be noticed by the Chairman as provided in Section 7.12 of this Ordinance, if one-third of the Members of the Corporation submit a petition to the chairman demanding such recall election.

7.32 Each Director shall hold office until the expiration of the term to which he or she was elected and until the successor has been elected and qualified.

7.4 *Initial Directors.* The initial Board of Directors shall consist of the Business Council serving at the date of incorporation, Chairman Leonard Prescott; Vice-Chairperson Allene Ross, and Secretary-treasurer Melvin Campbell Sr. At least two additional initial members of the Board shall be elected from among the voting members of the Community by the unanimous vote of the three aforementioned Directors at the first meeting of the Board. If any of the initial Directors shall leave office during the initial five year term, the remaining members of the Board shall fill the vacancy.

7.41. *Community Members Must Comprise a Majority of the Board.* Notwithstanding any other provision of the Articles, all five original Directors, and thereafter, at least a majority of the members of the board, plus one, shall be voting members of the Community, but only one member of any one family shall be eligible to simultaneously serve on the Board. For

purposes of this Section 7.41, "family" shall mean: father, mother, brother, sister, sons, daughters, and grandparents.

7.5 *Term of Office.* The initial Board of Directors shall serve for a term of five years from the date of incorporation, Section 7.3 and 7.17 of this Ordinance notwithstanding. Thereafter, the three members of the Shakopee Mdewakanton Sioux Community Business Council, if not then Directors, shall succeed the three Directors initially appointed, pursuant to the first sentence of Section 7.4 and successors shall be elected to the Directors elected pursuant to the second sentence of Section 7.4. The terms of the Directors who hold office by virtue of their offices as members of the Shakopee Mdewakanton Sioux Community Business Council shall continue for so long as they shall remain members of the Business Council. Upon the resignation, death, removal, or replacement of a member of the Business Council, such persons term of office as a Director shall simultaneously expire, and his or her successor as such member shall automatically become a Director of the Corporation. Successors to the elected Directors shall serve for three year terms from the date of election.

Vacancies on the Board of Directors shall be filled in accordance with these Articles, as they may occur.

7.6. *Compensation.* By Resolution of the Board of Directors, Directors shall be paid their actual and reasonable expenses, if any, of attendance at each meeting of the Board of Directors, and such reasonable compensation as may be determined by the Board of Directors; provided that nothing herein contained shall be construed to preclude

any Director from serving the corporation in any other capacity and receiving appropriate compensation for that service.

7.7. *Action of the Board.* The vote of the Directors shall be the act of the Board, and each Director shall have one vote. The Board of Directors may take any required or permitted action without meeting, provided that the action is taken by at least a quorum and that consent to the action is evidenced in writing by at least a quorum of Directors including the Chairman, and the consent is included in the corporate minutes and records.

7.8. *Quorum.* A majority of Directors shall constitute a quorum for the transaction of business in any regular or special meeting. The quorum must either include the Chairman, or the action taken must occur with the written consent of the Chairman. The act of a majority of a quorum of Directors including the Chairman or on his written consent, shall be the act of the Board.

7.9. *Regular Meetings.* One regular meeting of the Board shall be held within thirty (30) days after the Board is duly elected. The Board may provide by resolution the time, place and manner for holding regular meetings thereafter.

7.10. *Special Meetings.* Special meetings of the Board may be called at the request of the Chairman of the Board of Directors, the President of the Corporation, or by any two Directors.

7.11. *Annual Meeting.* A regular annual meeting of the Board shall be held immediately following the annual meeting of the Corporation.

7.12. *Notice of Special Meetings.* The Board may provide by resolution for the giving of notice for

special meetings. Any Directors may waive this right to notice of any meeting. The nature of the business to be transacted, and the purpose of any regular or special meeting of the Board of Directors shall be specified in the notice, or waiver of notice, of such a meeting.

7.13. *Manner of Meeting.* The Board of Directors may conduct regular or special meetings through the use of any means of communication by which all directors may simultaneously hear each other.

7.14. *Appointments.* The Board of Directors shall appoint all corporate officers. Each officer shall hold office until his successor has been duly appointed and qualified, or until removed as hereinafter provided.

7.15. *Vacancies and Removals.* Any vacancy occurring among the Directors may be filled by vote of the remaining members of the Board. A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. A Director may be removed for cause, by vote of a majority of all of the Members of the Corporation. Any removal action against the federally recognized Chairman of the Shakopee Mdewakanton Sioux Community, shall not be effective, unless and until such federal recognition as Chairman is withdrawn.

7.151. *Specific Notice of Removal Meeting Required.* A director may be removed by the Members, only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

7.152. *Removal by Judicial Action Started by Members.* The Shakopee Mdewakanton Sioux Community Court may remove a director from office in a proceeding commenced by the Corporation or at least 10% of Members if the Court finds that the director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the Corporation.

7.153. *Removal by Judicial Action Started by Business Council.* A director may be removed for cause, as described in Section 7.152, in a proceeding in the Shakopee Mdewakanton Sioux Community Court commenced by the Shakopee Mdewakanton Sioux Community Business Council.

7.16. *Resignation.* Any Director may resign from office at any time, such resignation to be made in writing and to take effect immediately without acceptance.

7.17. *Veto Power.* Subject to the provisions of Section 7.5 of this Ordinance, which shall otherwise control, the federally recognized Chairman of the Shakopee Mdewakanton Sioux Community shall serve as Chairman of the Board of Directors. The Chairman shall have the power to veto any action of the Board of Directors, provided that any such veto may be overridden by the unanimous vote of the remaining members of the Board or by a two-thirds majority of all of the Members of the Corporation.

7.18. *Contracts.* The Board of Directors may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

7.19. *Loans.* No loans greater than $10,000.00 (TEN THOUSAND DOLLARS) shall be contracted on behalf of the Corporation and evidence of indebtedness shall not be issued in the Corporation's name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

7.20. *Deposits.* All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select.

ARTICLE 8

8.0. *Corporate Officers*

8.1. *Number.* At its initial meeting, the Board of Directors shall appoint a President, Vice-President, Secretary and Treasurer. Other officers and assistant officers and agents deemed necessary may be appointed by the Board of Directors. Individuals may hold multiple offices, but the offices of President and Vice-President may not be jointly held.

8.2. *Term of Officers.* At the annual Director's meeting following annual meeting of the members of the Corporation, the Directors shall choose the corporate officers as provided in these Articles. Each officer shall hold office until the successor is appointed and qualified, or until removed.

8.3. *Removal.* Any officer of the Corporation may be removed by a majority of the Board, with or without cause, when in the judgment of the Board it would be in the best interests of the

Corporation. Such removal shall be without prejudice to the contract rights, if any, of the person removed.

8.4. *Duties of Officers.* The duties and powers of the officers of the Corporation are those specified in these Articles and shall include any additional duties and powers as may be set by resolution of the Board of Directors.

8.41. *President.*

A. The President shall be the principal executive officer of the Corporation and shall supervise and control all of the business activities of the Corporation.

B. The President shall present an annual report of the condition of the business of the Corporation to the Board of Directors.

C. The President shall appoint, discharge and fix the compensation of all employees and agents of the Corporation other than the duly appointed officers by the Board of Directors, subject to the approval of the Board of Directors.

D. The President shall sign and execute all contracts in the name of the Corporation, all deeds, mortgages, notes, drafts, or other orders for the payment of money, or other instruments which the Board of Directors have authorized to be executed, except in cases where the signing and execution shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed.

E. The President shall cause all books, reports, statements, and certificates to be properly kept and filed as required by law.

F. The President shall enforce these Articles and perform all duties incident to the office and which are required by law, and, generally, perform all duties as may be prescribed by the Board of Directors from time to time.

8.42. *Vice President.* In the absence of the President, the Vice President shall perform the duties of the President, and when so acting, shall have all the powers and be subject to all the responsibilities of the office of President. The Vice President shall also perform such other duties and have such other powers as from time to time may be assigned to him by the Board of Directors or President.

8.43. *Secretary.*

A. The Secretary shall be responsible for keeping the minutes of the meetings of the Board of Directors in an appropriate book set aside and used exclusively for such purpose.

B. The Secretary shall be responsible for giving notice of special meetings of the Board of Directors.

C. The Secretary shall be the custodian of the records and seal of the Corporation and shall affix the seal on Corporation papers when required.

D. The Secretary shall attend to all correspondence and present to the Board of Directors at its meetings all official communications received by the Secretary.

E. The Secretary shall in general perform all duties incident to the office of the Secretary and such other duties as from time to time may be

assigned by the President or by the Board of Directors.

8.44. *Treasurer*

A. The Treasurer shall have the care and custody of and be responsible for all funds and securities of the Corporation, and shall be responsible for the deposit of such funds and securities in the name of the Corporation in such banks, trust companies or other depositories as shall designated by the Board of Directors.

B. Subject to banking resolutions adopted by the Board of Directors, the treasurer shall, with the additional signature of either the President or Vice-President make, sign and endorse in the name of the Corporation all checks, drafts, notes, and other orders for the payment of money, and pay out and dispose of such under the direction of the President or the Board of Directors.

C. The Treasurer shall be responsible for keeping at the principal office of the Corporation accurate books of account of all its business and transactions and shall at all reasonable hours exhibit books and accounts to any director upon application at the office of the Corporation during business hours.

D. A report shall be rendered by the Treasurer of the condition of the finances of the Corporation at such times as shall be required by the Board.

E. The Treasurer shall perform all duties incident to the office of Treasurer of the Corporation.

F. If required by the Board of Directors, the Treasurer shall give such bond as the Board shall

determine appropriate for the faithful performance of the duties of Treasurer.

8.45. *Other Officers* Other officers shall perform such duties and have such powers as may be assigned to them by the Board of Directors. Assistant secretaries and assistant treasurers, in general, shall perform such duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board of Directors.

8.5. *Vacancies.* All vacancies in any office shall be filled promptly by the Board of Directors, either at regular meetings or at a meeting specially called for that purpose.

8.6. *Compensation of Officers.* The officers shall receive such salary or compensation as may be fixed by the Board of Directors. No officer shall be prevented from receiving compensation by reason of the fact that the officer is also a Director of the Corporation.

ARTICLE 9

9.0. *Distribution of Net Profit to Community Required.* Any Net Profits or Dividends of the Corporation shall be delivered to the Community for distribution as provided by the Shakopee Mdewakanton Sioux Community Business Proceeds Distribution Ordinance No. 12-29-88-002, in the same manner as has occurred when the gaming businesses of the Community were operated directly by the Community. If the Corporation fails to make timely delivery of such Net Profits or Dividends as a result of any action or inaction by the Board of Directors, or officers and

employees of the Corporation under their direction and control, and such failure is certified by the auditors for the Community or the Corporation, that certified failure shall be deemed to be sufficient cause for removal, pursuant to Article 7.15, 7.152 or 7.153, of the responsible Directors.

ARTICLE 10

10.0. *Amendment* These Articles of Incorporation may be unanimously altered, amended, repealed or new Articles may be unanimously adopted by the Board of Directors at a regular or special meeting of the Board, provided that any such amendments which are not unanimously approved by the Board of Directors shall be ratified and approved by a majority of all of the Members of the of the Corporation. Any amendments which are unanimously adopted by the Board, shall be subject to repeal, by action of a majority of all of the Members of the of the Corporation.

ARTICLE 11

11.0. *Bylaws.* This Corporation shall have no bylaws.

ARTICLE 12

12.0. *Dividends.* If the Corporation accumulates excess capital by sale of assets, or some other unusual event, the Board may, in its sole discretion, taking into account such reserves as the Board deems necessary, declare and deliver a dividend to the Community. Dividends may be declared in such amounts and at such times as the Board may determine, provided that all such

dividends shall be delivered to the Community for distribution as provided by Article 9.

ARTICLE 13

13.0. *Corporate Seal.* The seal of the Corporation shall be circular in form and bear the name of the Corporation and the year of its organization.

ARTICLE 14

14.0 *Indemnification.* The Corporation shall indemnify any Director or officer or former Director or officer of the Corporation, against expenses actually and reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been such a director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence, fraud or misconduct in the performance of duty to the Corporation.

ARTICLE 15

15.0 *Incorporators.* The incorporators of the Corporation are:

Leonard Prescott, Chairman, Shakopee Mdewakanton Sioux Community, 13733 Thunderbird Circle, Shakopee, Minnesota, 55379.

Allene Ross, Vice Chair, Shakopee Mdewakanton Sioux Community, 13570 McKenna Road, Shakopee, Minnesota 55379

Melvin Campbell, Sr., Secretary-Treasurer, 2950 W. Woodland Trail, Shakopee, Minnesota 55379.

ARTICLE 16

16.0 *Fiscal Year.* The Corporation shall have a fiscal year, which shall be determined by the Board of Directors during the first twelve months of operation of the Corporation. Such fiscal year shall end on the last day of any one calendar month, and shall begin the first day of the next succeeding calendar month.

/s/
Leonard Prescott
Chairman & Incorporator

/s/
Melvin Campbell, Sr.
Secretary-Treasurer
& Incorporator

/s/
Allene Ross
Vice Chairperson & Incorporator

COUNTY OF SCOTT)
)
ss)
)
STATE OF MINNESOTA)

The foregoing instrument was acknowledged before me this 18th day of March, 1991, by Leonard Prescott, Chairman of SHAKOPEE MDEWAKANTON SIOUX COMMUNITY, a federally recognized Indian tribe, on behalf of the Community.

/s/
Diane L. Jensen
Notary Public

[seal]

COUNTY OF SCOTT)
)
ss)
)
STATE OF MINNESOTA)

The foregoing instrument was acknowledged before me this 18th day of March, 1991, by Allene K. Ross, Vice-Chairperson of the SHAKOPEE MDEWAKANTON SIOUX COMMUNITY, a federally recognized Indian tribe, on behalf of the Community.

/s/
Diane L. Jensen [seal]
Notary Public

COUNTY OF SCOTT)
)
ss)
)
STATE OF MINNESOTA)

The foregoing instrument was acknowledged before me this 18th day of March, 1991, by Melvin Campbell, Sr. Secretary-treasurer of the SHAKOPEE MDEWAKANTON SIOUX COMMUNITY, a federally recognized Indian tribe, on behalf of the Community.

/s/
Diane L. Jensen [seal]
Notary Public

Filed: 3/19/91

Date /s/
Kay Tupper-Bunker
Clerk of Court
Shakopee Mdewakanton Sioux Community

SHAKOPEE MDEWAKANTON SIOUX COMMUNITY
Corporation Ordinance
As Enacted 2-27-91-004

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SECTION 1

1.0. *Title.* This Ordinance shall be known as the Shakopee Mdewakanton Sioux Community Business Corporation Ordinance.

SECTION 2

2.0. *Definitions.* As used in this Ordinance:

2.01 "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto.

2.02 "Authorized shares" means the shares of all classes which the corporation is authorized to issue.

2.03 "Clerk of Court" means the Clerk of Court for the Shakopee Mdewakanton Sioux Community.

2.04 "Corporation" means a corporation subject to the provisions of this Ordinance.

2.05 "Community" means the Shakopee Mdewakanton Sioux Community.

2.06 "General Council" means the General Council of the Shakopee Mdewakanton Sioux Community as defined pursuant to the Constitution and Bylaws of the Community.

2.07 "Net Assets" means the amount by which the total assets of a corporation exceed the total debts of the corporation.

2.08 "Member" and "Member of the Corporation" shall mean a voting member of the Shakopee Mdewakanton Sioux Community, holding a voting interest in a corporation wholly owned by the Community.

2.09 "Shares" means the units into which the ownership interests in a corporation are divided.

2.10 "Shareholder" means one who is a holder of a record of shares in a corporation.

SECTION 3

3.0. *Purposes.* Corporations may be organized under this Ordinance for any lawful purpose or purposes. Unless otherwise provided in its Articles, a corporation has general business purposes.

SECTION 4

4.0. *General Powers.* Subject to any limitations provided in any other laws of the community, or in a Corporation's articles, each corporation shall have power:

4.01. To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.

4.02. Subject to the provisions of Section 4.12 in the case of corporations wholly owned by the Community, To sue and be sued, complain and defend, in its corporate name, except that the extent of the corporation's liability shall be limited to the assets of the corporation and shall be subject to the limitations contained in Section 11 of this Ordinance.

4.03. To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced. A corporation is not obligated to adopt a corporate seal. The use or nonuse of a corporate seal shall not

affect the validity, recordability, or enforceability of a document or act. If a corporation has a corporate seal, the use of the seal by the corporation on a document is not necessary.

4.04. To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

4.05 To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

4.06. To lend money and use its credit to assist its employees.

4.07. To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

4.08. To make contracts and guarantees and incur liabilities, borrow money at such rates of interests as the corporation may determine, issue its notes, bonds, and other obligations by mortgage or pledge

of all or any of its property, franchises and income.

4.09. To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

4.010. To conduct its business, carry on its operations and have offices and exercise the powers granted by this Ordinance, within or without the Community reservation boundaries.

4.011. To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.

4.012 to make and alter by-laws, not inconsistent with its articles of incorporation or with the laws of the Shakopee Mdewakanton Sioux Community, for the administration and regulation of the affairs of the corporation.

4.013. To make donations for the public welfare or for charitable, scientific or educational purposes.

4.014. To transact any lawful business which the board of directors shall find will be in aid of governmental policy.

4.015. To pay pensions and establish pension plans, pension trusts, profit sharing plans, stock bonus plans, stock option plans and other incentive plans for any or all of its directors, officers and employees.

4.016. To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust or other enterprise.

4.017 To establish committees of the board of directors, elect or appoint persons to the committees, and define their duties and fix their compensation.

4.018. To have and exercise all powers necessary or convenient to effect its purposes.

4.1. *Special Powers of Corporations Wholly Owned by the Community.* The special powers described in this Section 4.1 shall only be available to a Corporation wholly owned by the Community.

4.11. A Corporation wholly owned by the Community may assume any or all of the Community's rights, privileges and immunities (including, without limitation, sovereign immunity) concerning federal, state, or local taxes or regulations, and jurisdiction to the same extent that the Community would have such rights, privileges and immunities if it engaged in the activities undertaken by the Corporation. Absent consent, a Corporation wholly owned by the Community shall not be subject to taxation by the Community, except to the extent that such taxation is necessary and reasonably appropriate to compensate the Community for services provided to the corporation by the Community.

4.12. A corporation wholly owned by the Community, shall have the power to sue and is authorized to consent to be sued in the Judicial Court of the Community, and other courts of competent jurisdiction, provided, however, that any recovery against such corporation shall be limited to the assets of the corporation, and that to be effective,

such corporation, only upon action of the Board of Directors, must explicitly consent to be sued in a contract or other commercial document which specifies the terms and conditions of such consent.

4.2 Any corporation which holds an interest in trust land may not encumber that interest, without the prior written approval by the Community and the Area Director, Minneapolis Area Office Bureau of Indian Affairs.

SECTION 5

5.0. *Corporate Name.* The corporate name:

5.1. Shall contain the word "corporation", "company", "incorporated" or "limited", or shall contain an abbreviation of one of such words.

5.2. Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

5.3. Shall not be the same as, or deceptively similar to, the name of any corporation existing under the laws of the Shakopee Mdewakanton Sioux Community, or the State of Minnesota, or a name the exclusive right to which is, at the time, reserved in the manner provided in this Ordinance, or the name of a corporation which has in effect a registration of its corporate name as provided in this Ordinance, or the laws of the State of Minnesota.

SECTION 6

6.0. *Registered Agent.* Each corporation organized pursuant to this Ordinance shall have and continuously maintain on the Shakopee Mdewakanton Sioux Community Reservation a mailing address for a registered agent which address may be, but need not be, the same as its place of business.

SECTION 7

7.0. *Service of Process on Corporation.* Any officer of a corporation or the registered agent so appointed by a corporation shall be an agent of such corporation upon whom any process notice or demand required or permitted by law to be served upon the corporation may be served.

SECTION 8

8.0. *Authorized Shares.* Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designation, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of or provide special voting rights for the shares of any class to the extent not inconsistent with the provisions of this Ordinance.

8.1. *Preferred or Special Shares.* Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may

provide or authorize the board of directors to issue shares of preferred or special classes:

8.11. Subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation, or by the board of directors for the redemption thereof.

8.12. Entitling the holders thereof to cumulative, noncumulative or partially cumulative dividends.

8.13. Having preference over any other class or classes of shares as to the payment of dividends.

8.14. Having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation.

8.15. Convertible into shares of any other class or into shares of any series of the same or any other class.

8.2. *Shares in Community Owned Corporations.* Corporations wholly owned and operated by the Shakopee Mdewakanton Sioux Community shall issue a stock certificate to the Community; and all shares evidenced by such certificate shall be held by and for the Community. The members of the General council shall enjoy such voting rights in the corporation as are provided by the Constitution and bylaws of the Community to members of the General Council, with additional procedural voting rights in the Corporation as provided in Section 40.0 of this Ordinance. The voting rights of the members of the General Council in a Corporation wholly owned by the

Community shall not be diminished or enhanced by the issuance of shares. Notwithstanding Section 8.1, corporations wholly owned by the Community may not issue preferred or special shares.

SECTION 9

9.0. *Payment For Shares.* The consideration, if any, for the issuance of shares may be paid, in whole or in part, in cash, in other property, tangible or intangible, received or to be received by the corporation, or in labor or services actually performed, or to be performed for the corporation.

9.1. *Future Consideration for Shares.* Promissory notes, future services, or other consideration which has only an intangible future value may be accepted as payment or part payment for the issuance of shares of a corporation.

9.2 Notwithstanding the provisions of this Section 9, a member of the Community may not sell, transfer, assign, devise or bequeath, voting rights in a corporation wholly or partially owned by the Community. This Section shall not limit a members right to issue a proxy as provided in Section 40.0.

SECTION 10

10.1. *Certificates Representing Shares.* The shares of a corporation shall be represented by certificates signed by an agent or officer authorized in the articles or bylaws to sign share certificates, or in the absence of such authorization, by an officer of the corporation.

10.2 *Certificates Representing Voting Rights in Corporations Wholly Owned by the Community.* The voting

rights in a corporation wholly owned by the Community shall be represented by certificates signed by the Clerk of Court, and shall evidence those rights as provided in this Ordinance.

SECTION 11

11.0. *Limited Liability of Shareholders.* A holder of shares of a corporation, and, with respect to Corporations wholly owned by the Community, the holder of any voting rights, shall be under no obligation to the corporation or its creditors with respect to such shares, or voting rights, other than the obligation to pay to the corporation the full consideration for which such shares were issued or to be issued.

11.1. *Limited Liability of Shakopee Mdewakanton Sioux Community.* The Shakopee Mdewakanton Sioux Community shall be under no obligation to a corporation or the creditors of any corporation which the Community incorporates, owns or operates, in whole or in part, and the Community shall not be deemed to have waived any of the Community's privileges or immunities if the Community incorporates, owns or operates a corporation, in whole or in part.

SECTION 12

12.0. *By-laws.* A corporation may, but need not, have by-laws. The initial by-laws of a corporation may be adopted by its board of directors. Unless reserved to the shareholders by the articles, the power to alter, amend, or repeal the by-laws or adopt new by-laws, subject to repeal or change by action of the shareholders, shall be vested in the Board of Directors.

SECTION 13

13.0. *Articles of Incorporation.* The articles of incorporation shall set forth:

(a) The name of the corporation; and

(b) The mailing address of the corporation office and the name of its registered agent at that address; and

(c) The aggregate number of shares that the corporation has authority to issue; and

(d) The name and address of each incorporator.

13.1 *Provisions Subject to Modification in Articles.* The following provisions govern a corporation unless modified in the articles:

(a) A corporation has general business purposes;

(b) A corporation has perpetual existence and certain powers as provided in this ordinance;

(c) The power to adopt, amend or repeal the bylaws is vested in the board;

(d) The corporation does not permit cumulative voting for directors;

(e) The affirmative vote of a majority of directors present is required for an action of the board;

(f) A written action by the board taken without a meeting must be signed by a majority of the directors;

(g) The board may authorize the issuance of securities and rights to purchase securities;

(h) All shares are common shares entitled to vote and are of one class and one series;

(i) All shares have equal rights and preferences in all matters not otherwise provided for by the board;

(j) The par value of shares is fixed at one cent per share for certain purposes and may be fixed by the board for certain other purposes;

(k) The board or the shareholders may issue shares for any consideration or for no consideration to effectuate share dividends or splits, and determine the value of nonmonetary consideration.

(l) Shares of a class or series must not be issued to holders of shares of another class or series to effectuate share dividends or splits, unless authorized by a majority of the voting power of the shares of the same class or series as the shares to be issued.

(m) A corporation may issue rights to purchase securities whose terms, provisions, and conditions are fixed by the board;

(n) A shareholder has no preemptive rights, unless otherwise provided by the board;

(o) The affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote at a duly held meeting is required for an action of the

shareholders, except where this ordinance requires the affirmative vote of a majority of the voting power of all shares entitled to vote;

(p) Shares of a corporation acquired by the corporation may be reissued.

(q) Each share has one vote unless otherwise provided in the terms of the share;

(r) A corporation may issue shares for a consideration less than the par value, if any, of the shares;

(s) Except as limited by Sections 4.12, A corporation shall have the power to sue and be sued in the Judicial Court of the Community, and in other courts of competent jurisdiction; provided, however, that any recovery against a corporation shall be limited to the assets of the corporation.

13.2 *Provisions Subject to Modification in Articles or bylaws.* The following provisions govern a corporation unless modified either in the articles or in the bylaws:

(a) Directors serve for an indefinite term that expires at the next regular meeting of the shareholders;

(b) The compensation of the board is fixed by the board.

(c) If the board fails to select a place for a board meeting, it must be held at the principal executive office;

(d) A director may call a board meeting, and the notice of the meeting need not state the purpose of the meeting;

(e) a majority of the board is a quorum for a meeting;

(f) a committee shall consist of one or more persons, who need not be directors, appointed by a majority vote of the directors present;

(g) The board may establish a special litigation committee;

(h) Officers may delegate some or all of their duties and powers, if not prohibited from so doing;

(i) Regular meetings of shareholders need not be held, unless demanded by at least 10% of the shareholders;

(j) In all instances where a specific minimum notice period has not otherwise been fixed by law, not less than five days notice is required for a meeting of shareholders;

(k) the number of shares required for a quorum at a shareholder's meeting is a majority of the voting power of the shares entitled to vote at the meeting;

(l) The board may fix a date up to sixty days before the date of a shareholders' meeting as the date for the determination of the holders of shares entitled to notice of and entitled to notice of the meeting;

(m) Indemnification of directors is required;

(n) The board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement.

13.3 *Permitted Provisions if Included in Articles.* The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included in the articles;

(a) The members of the first board may be names;

(b) A larger than majority vote may be required for board action;

(c) A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be limited to negligence, fraud or misconduct;

(d) The manner of giving or prescribing the manner of giving voting rights to persons other than shareholders.

13.4 *Permitted Provisions if Included in bylaws.* The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included in the bylaws:

(a) A manner for increasing or decreasing the number of directors;

(b) Additional qualifications for directors;

(c) Directors may be classified;

(d) Absent directors may be permitted to give written consent or opposition to a proposal;

(e) Authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation, other than the chief executive officer;

(f) Additional officers may be designated;

(g) Additional powers, rights duties, and responsibilities may be given to officers;

(h) a method for filling vacant offices may be specified;

(i) A certain officer or agent may be authorized to sign share certificates;

(j) The transfer or registration of transfer of securities may be restricted.

13.5 Consent to suit by a corporation shall in no way extend to the community, nor shall a consent to suit by a corporation in any way be deemed a waiver of any of the rights, privileges and immunities of the community.

13.6 The articles may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the corporation

13.7 It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this ordinance.

SECTION 14

14.0 *Incorporators.* Any member of the Shakopee Mdewakanton Sioux Community over the age of eighteen may act as the incorporator of a corporation by delivering articles of incorporation to the Clerk of Court for filing.

SECTION 15

15.0 *Filing of Incorporation.* Duplicate originals of the articles of incorporation shall be delivered to the Clerk of Court for the Shakopee Mdewakanton

Sioux Community. If the clerk finds that the articles of incorporation conform to tribal law, the clerk shall:

15.1 Endorse on each such duplicate originals the word "filed" and the month, day, and year of the filing thereof.

15.2 Maintain one such duplicate original in the office of the Clerk of Court.

15.3 Issue a certificate of incorporation to which the Clerk of Court shall affix the duplicate original and return to the incorporators.

SECTION 16

16.0. *Effect of Issuance of Certificate of Incorporation.* Upon the issuance of the certificate of incorporation, the corporate existence shall begin.

SECTION 17

17.0 *Right to Amend or Restate Articles of Incorporation.* A corporation may amend or restate its articles of incorporation.

SECTION 18

18.0 *Articles of Amendment or Restatement.* The articles of amendment or restatement shall be executed by: (a) its president or a vice president and (b) its secretary.

SECTION 19

19.0 *Filing of Articles of Amendment or Restatement.* Duplicate originals of the articles of amendment or restatement shall be delivered to the Clerk of

Court of the Shakopee Mdewakanton Sioux Community. If the Clerk determines that the articles of amendment or restatement conform to tribal law, the Clerk shall:

19.1 Endorse on each duplicate original the word "filed" and the month, day, and year of such filing thereof.

19.2 Maintain one such duplicate original in the Clerk's office.

19.3 Issue a certificate of amendment to which the Secretary shall affix the other duplicate original and return to the corporation.

SECTION 20

20.0 *Effect of Certificate of Amendment.* Upon the issuance of the certificate of amendment by the Clerk, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

SECTION 21

21.0 *Board of Directors.* The business and affairs of the corporation shall be managed by a board of directors, subject to any limitations set forth in the articles of incorporation. The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a member of the Shakopee Mdewakanton Sioux Community unless the articles of incorporation or bylaws so prescribe.

21.1 *Special Committees.* An affirmative vote of a majority of the board may establish committees

having the authority of the board in the management of the business of the corporation only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the corporation and whether those rights or remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board. The committees shall consist of one or more persons, who need not be directors.

SECTION 22

22.0 *Number and Election of Directors.* A board of directors must consist of one or more individuals, with the number established in the articles of incorporation or bylaws. Initial directors may be named in the articles of incorporation or elected as provided in the articles, subject to Section 23. If a corporation is to be wholly or partially owned by the Shakopee Mdewakanton Sioux Community, the Articles of Incorporation or bylaws may provide that the Shakopee Mdewakanton Sioux Business Council may vote the Community's shares.

If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a number of directors by the holders of one or more authorized classes of shares.

SECTION 23

23.0 *Terms of Directors.* The terms of the initial directors expire at the first shareholders' meeting at which directors are elected, unless the articles provide otherwise, but in no case shall any one term of any director exceed five years. The terms of all subsequent directors expire at the next annual meeting following their election unless the articles of incorporation or bylaws provide otherwise or for staggered terms. Directors appointed to fill a vacancy shall serve until the next shareholders' meeting at which directors are elected. Despite expiration of a director's term, a director continues to serve until the successor is elected and qualifies or until the board size is decreased. The articles of incorporation or bylaws may provide for staggered terms.

SECTION 24

24.0 *Resignation of Directors.* A director may resign at any time by delivering written notice to the board of directors or its Chairman.

SECTION 25

25.0 *Removal of Directors.* The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only with cause. If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove the director.

25.1 A director may be removed by the shareholders only at a meeting called for the purpose of removing the director and the meeting notice

must state that the purpose, or one of the purposes, of the meeting is removal of the director.

25.2 The Shakopee Mdewakanton Sioux Community Court may remove a director from office in a proceeding commenced by the corporation or its shareholders holding at least 10% of the outstanding shares of any class if the Court finds that the director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the corporation and further finds that removal is in the best interest of the corporation.

25.3 If a corporation is wholly owned and operated by the Shakopee Mdewakanton Sioux Community, a director may be removed for cause in a proceeding in the Shakopee Mdewakanton Sioux Community Court commenced by the Shakopee Mdewakanton Sioux Business Council.

SECTION 26

26.0 *Vacancies on the Board.* Unless the articles of incorporation provide otherwise, a vacancy on the board may be filled by the board of directors.

SECTION 27

27.0 *Compensation of Directors.* Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

SECTION 28

28.0 *Meetings of the Board.* The board of directors may hold regular or special meetings, and need not

meet within the borders of the Shakopee Mdewakanton Sioux Community Reservation.

28.1 *Telecommunications Meetings Permitted.* Unless the articles of incorporation or bylaws provide otherwise, the board may permit any or all directors to conduct or participate in a meeting through the use of any means of communication by which all directors may simultaneously hear each other during the meeting. A director so participating is deemed present.

28.2 *Consent to Action Without Meeting Permitted.* Unless the articles of incorporation or bylaws provide otherwise, action by the board of directors may be taken without a meeting if a majority of the members take the action. Such action must be evidenced in writing, signed by the requisite number of directors and included in the minutes or filed with the corporate records.

SECTION 29

29.0 *Notice of Meeting.* Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board may be held without notice of the date, time, place or purpose of the meeting. Unless the articles of incorporation or bylaws provide for a different period, special meetings of the board must be preceded by at least forty eight hours notice of the date, time and place of the meeting. Either before or after a meeting, a director may waive, orally or in writing, any required notice, and a director's attendance at or participation in a meeting waives any required notice unless the director objects at the meeting's beginning and does not vote thereafter on actions at the meeting.

SECTION 30

30.0 *Quorum and Voting.* Unless the articles of incorporation or bylaws provide otherwise, a quorum consists of a majority of the number of directors, provided that in no event shall a quorum consist of fewer than one-third the number of directors. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number. Robert's Rules of Order shall govern at such meetings, unless the articles or bylaws provide for another body of procedures for meetings.

SECTION 31

31.0 *Director Conflict of Interest.* A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has an interest. A conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

(1) the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved, or ratified the transaction by a majority of the board or committee; but the interested director or directors shall not be counted in determining the presence of, or required number to constitute, a quorum and shall not vote.

(2) the material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction by a majority of the shares entitled to vote that are owned by persons other than the interested director or directors; or

(3) the transaction was fair to the corporation at the time it was approved.

SECTION 32

32.0 *Loans to Directors.* A corporation may not lend money to or guarantee the obligation of a director of the corporation unless the shareholders approve the loan or guarantee or the board of directors determines the loan or guarantee benefits the corporation and approves the loan or guarantee. A corporation wholly owned by the Community may not lend money to or guarantee the personal obligation of a director, officer or employee of the corporation, under any circumstances.

SECTION 33

33.0 *Required Officers.* A corporation has the officers described in its articles or bylaws or appointed by the board of directors in accordance with the articles or bylaws. The articles or bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation. The same individual may simultaneously hold more than one office in a corporation. Each officer has

the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors.

SECTION 34

34.0 *Resignation and Removal of Officers.* An officer may resign at any time by delivering notice to the corporation. A board of directors may remove any officer at any time with or without cause.

SECTION 35

35.0 *Contract Rights of Officers.* The appointment of an officer does not itself create contract rights, nor does the resignation or removal of an officer affect the contract rights, if any, of the officer or corporation. The removal is without prejudice to the contract rights of the officer.

SECTION 36

36.0 *General Standards for Directors and Officers.* Directors and officers shall discharge their duties:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner they reasonably believe to be in the best interests of the corporation.

SECTION 37

37.0 *Reliance.* In discharging their individual duties, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one or more officers or employees of the corporation whom the officer or director reasonably believe to be reliable and competent in the matters presented;

(2) legal counsel, public accountants, or other persons as to matters the officer or director reasonably believes are within the person's professional or expert competence; or

(3) a committee of the board of directors upon which the officer or director does not serve, if such officer or director reasonably believe the committee merits confidence.

Directors and officers are not liable for any action taken in their corporate capacity, or any failure to take any action, it they performed the duties of office in compliance with this section.

SECTION 38

38.0 *Meetings of Shareholders and Members.* A corporation may hold a meeting of shareholders, or in the case of Corporations wholly owned by the Community, of Members, on an annual or other less frequent periodic basis, but need not be held unless required by the articles or bylaws or by Section 38.2. Annual meetings need not be held within the Reservation, but annual meetings of

corporations wholly owned by the Community shall be held within 40 miles of the Reservation.

38.1 The failure to hold an annual meeting does not affect the validity of any corporate action.

38.2 If a regular meeting of shareholders, or in the case of Corporations wholly owned by the Community, of Members has not been held during the immediately preceding 400 days, a shareholder, shareholders, or Members holding 3% or more of the voting power of all shares entitled to vote may demand a regular meeting by written notice of demand given to an officer of the corporation. Within 30 days after receipt of the demand by an officer, the board shall cause a regular meeting to be called and held on notice no later than 90 days after receipt of the demand, all at the expense of the corporation. If the board fails to cause a regular meeting to be called and held as required by this Section 38.2, the shareholder, shareholders or Members making the demand may call the regular meeting by giving notice as required by section 39, all at the expense of the corporation.

38.3 In the case of corporations wholly owned by the Shakopee Mdewakanton Sioux Community, a special meeting may be called, and meetings may be called and held in the same manner as applicable law provides for meetings of the General Council.

38.4 Unless the articles of incorporation or bylaws provide otherwise, action

required to be taken at a shareholder's or in the case of Corporations wholly owned by the Community, Members, meeting may be taken without a meeting if the action is taken by a majority of shareholders or Members or a majority of each class of shareholders entitled to vote. Such action must be evidenced in writing, signed by the requisite number of shareholders and delivered to the corporation for inclusion in the minutes and records.

SECTION 39

39.0 *Notice of Shareholder Meetings.* A corporation shall notify shareholders of the date, time and place of each annual or special shareholders' meeting at least 10 days before the meeting. A shareholder may waive notice and a shareholder may be deemed to have waived notice if the shareholder attends the meeting unless the shareholder objects at the beginning of the meeting.

SECTION 40

40.0 *Voting Entitlement of Shares.* Unless the articles of incorporation provide otherwise, and subject to the provisions of Sections 8.2 and 9.2 of this Ordinance, each outstanding share is entitled to one vote on each matter voted on at a shareholder's meeting. A shareholder may vote a share, or in the case of a corporation wholly owned by the Community, a voting member of the Community may cast a ballot, in person or by proxy provided that the shareholder, or voter, has appointed a proxy by signing a notarized,

revocable, appointment and filed the appointment with the Clerk of Court. No irrevocable proxies shall be valid.

SECTION 41

41.0 *Voting Trusts and Agreements.* One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the trust's provisions and transferring the shares to the trustee. When a voting trust agreement is signed, the trustee shall deliver to the corporation the names and address of all owners of beneficial interests in the trust, together with the number and class of shares transferred to the trust. Two or more shareholders may also provide for the manner in which they will vote their shares by singing an agreement for that purpose. This Section, 41.0 shall not apply to interests in corporations wholly owned by the Community.

41.1 Any voting trust agreement for any interest held in a corporation wholly owned by the Community shall be void and unenforceable.

SECTION 42

42.0 *Quorum.* The holders of the majority of the voting power of the shares entitled to vote at a meeting are a quorum for the transaction of business, unless a larger or smaller proportion or number is provided in the articles or bylaws. The shareholders shall take action by the affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote, except where this Ordinance or the articles require a larger proportion or number. If the

articles require a larger proportion or number than is required by this ordinance for a particular action, the articles control.

SECTION 43

43.0. *Voluntary Dissolution by Incorporators.* A corporation which has not commenced business and which has not issued any shares, may be voluntarily dissolved by its incorporators at any time in the following manner:

43.1. Articles of dissolution shall be executed in duplicate by a majority of the incorporators, and verified by them, and shall set forth:

(1) The name of the corporation.

(2) The date of issuance of its certificate of incorporation.

(3) That none of its shares has been issued.

(4) That the corporation has not commenced business.

(5) That the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto.

(6) That no debts of the corporation remain unpaid.

(7) That a majority of the incorporators elect that the corporation be dissolved.

43.2. Duplicate originals of the articles of dissolution shall be delivered to the Clerk of Court. If the Clerk finds that the articles of dissolution conform to law, the Clerk shall:

(1) Endorse on each of such duplicate originals the word "filed", and the month, day and year of the filing thereof.

(2) File one of such duplicate originals in the Clerk of Court's Office.

(3) Issue a certificate of dissolution to which the Clerk shall affix the other duplicate original.

43.3. The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the Secretary, shall be returned to the incorporators or their representative. Upon the issuance of such certificate of dissolution by the Secretary, the existence of the corporation shall cease.

SECTION 44

44.0. *Voluntary Dissolution by Consent of Shareholders.* A corporation may be voluntarily dissolved by the written consent of a majority of each class of its shareholders. Subject to Section 64, a corporation wholly owned and operated by the Shakopee Mdewakanton Sioux Community shall only be dissolved voluntarily by a resolution adopted by a two-thirds majority of the then voting members of the Shakopee Mdewakanton Sioux Community General Council, upon recommendation and

approval of such resolution by the Board of Directors.

44.1 Upon the execution of such written consent, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice president, or in the case of corporations wholly owned by the Community, by the Chairman and Vice-Chairman of the Community, and in all cases by the corporation's Secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(a) The name of the corporation.

(b) A statement that written consent has been signed by the requisite number of shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

SECTION 45

45.0. *Voluntary Dissolution by Act of Corporation.* A corporation may be dissolved by the act of the corporation, when authorized in the following manner:

45.1. The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

45.2. A corporation wholly owned and operated by the Shakopee Mdewakanton Sioux Community with no shares having been issued shall be dissolved by a resolution adopted by the Board of Directors and separately concurred in by a majority of the then voting members of the Shakopee Mdewakanton Sioux Community Business Council.

45.3 Written notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this Ordinance for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or special meeting, shall state that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation.

45.4. At such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

45.5. Upon the adoption of such resolution, a statement of intent to dissolve shall be

executed in duplicate by the corporation by: (a) its president or a vice president and (b) by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(1) The name of the corporation.

(2) A copy of the resolution adopted by the shareholders or the Community authorizing the dissolution of the corporation.

(3) The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.

(4) The number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively.

SECTION 46

46.0. *Filing of Statement of Intent to Dissolve.* Duplicate originals of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the Clerk of Court. If the Clerk of Court finds that such statement conforms to law, the Clerk shall:

46.1. Endorse on each of such duplicate originals the word "filed", and the month, day and year of the filing thereof.

46.2. File one of such duplicate originals in the Clerk of Court's Office.

46.3. Return the other duplicate original to the corporation or its representative.

SECTION 47

47.0. *Effect of Statement of Intent to Dissolve.* Upon the filing with the Clerk of Court of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until a certificate of dissolution has been issued by the Clerk of Court or until a decree dissolving the corporation has been entered by the Shakopee Mdewakanton Sioux Community Court.

SECTION 48

48.0. *Procedure After Filing of Statement of Intent to Dissolve.* After filing with the Clerk of Court the statement of intent to dissolve:

48.1. The corporation shall immediately cause notice thereof to be mailed to each known creditor of the corporation.

48.2. The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind,

among its shareholders according to their respective rights and interests.

SECTION 49

49.0. *Articles of Dissolution.* When all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice president and by its secretary, which statement shall set forth:

49.1. The name of the corporation.

49.2. That all debts, obligation and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefore.

49.3. That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests.

49.4. That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction or any judgment, order or decree which may be entered against it in any pending suit.

SECTION 50

50.0. *Filing Articles of Dissolution.* Duplicate originals of such articles of dissolution shall be delivered to the Clerk of Court. If the Clerk finds that such articles of dissolution conform to tribal law, the Clerk shall:

50.11. Endorse on each of such duplicate originals the word "filed", and the month, day and year of the filing thereof.

50.12. Maintain one of such duplicate originals in the Clerk of Court's Office.

50.13. Issue a certificate of dissolution to which the Clerk shall affix the other duplicate original.

50.20. The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the Clerk, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers.

SECTION 51

51.0. *Involuntary Dissolution.* A corporation may be dissolved involuntarily by a decree of the Shakopee Mdewakanton Sioux Community Court in an action filed in the name of the Community by the Business Council for the Shakopee Mdewakanton Sioux Community when it is established that:

51.1. The corporation procured its articles of incorporation through fraud; or

51.2. The corporation has continued to exceed or abuse the authority conferred upon it by law; or

51.3. The corporation has failed for ninety days to appoint and maintain a registered agent on the Shakopee Mdewakanton Sioux Community Reservation; or

51.4. The corporation has failed for ninety days after change of its registered officer or registered agent to file in the Clerk of Court's office a statement of such change.

SECTION 52

52.0. *Venue and Process.* Every action for the involuntary dissolution of a corporation shall be commenced by the General Counsel for the Community in the name of the Shakopee Mdewakanton Sioux Community in the Shakopee Mdewakanton Sioux Community Court. Summons shall issue and be served as in other civil actions.

SECTION 53

53 0. *Jurisdiction of Shakopee Mdewakanton Sioux community Court to Liquidate Assets and Business of Corporation.* The Shakopee Mdewakanton Sioux Community Court shall have full power to liquidate the assets and business of a corporation:

53.1. *Shareholder Actions.* In an action by a shareholder when it is established:

(1) That the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

(2) That the acts of the directors or those in control of the corporation are illegal or fraudulent; or

(3) That the corporate assets are being misapplied or wasted.

53.2. *Actions by Creditors.* In an action by a creditor:

(1) When the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the corporation is insolvent; or

(2) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

53.3. *Action by the Corporation.* Upon application by a corporation which has filed a statement of intent to dissolve, as provided in this Ordinance, to have its liquidation continued under the supervision of the Court.

53.4. *Action by the Community.* When an action has been filed by the General Council for the Community to dissolve a corporation and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution.

53.5. *Shareholders not Necessary Parties.* It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

SECTION 54

54.0. *Procedure in Liquidation of Corporation by the Shakopee Mdewakanton Sioux Community Court.* In proceedings to liquidate the assets and business of a corporation, the Shakopee Mdewakanton Sioux Community Court shall have the power to issue injunctions, to appoint a receiver or receivers *pendente lite,* with such powers and duties as the

court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had.

54.1. After a hearing had upon such notice as the Shakopee Mdewakanton Sioux Community Court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the Court, the Court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers shall have authority, subject to the order of the Court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

54.2. The Shakopee Mdewakanton Sioux Community Court shall have power to allow from time to time as expenses of the liquidation compensation to the receiver or receivers and to attorneys in

the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

54.3. A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

SECTION 55

55.0. *Filing of Claims in Liquidation Proceedings.* In proceedings to liquidate the assets and business of a corporation, the Shakopee Mdewakanton Sioux Community Court may require all creditors of the corporation to file with the Clerk of Court or with the receiver, in such form as the Court may prescribe, proofs under oath of their respective claims. If the Court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the Court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of the Court from participating in the distribution of the assets of the corporation.

SECTION 56

56.0. *Discontinuance of Liquidation Proceedings.* The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the Court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

SECTION 57

57.0. *Decree of Involuntary Dissolution.* In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts and obligations, all the property and assets have been applied so far as they will go to their payment, the Shakopee Mdewakanton Sioux Community Court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

SECTION 58

58.0. *Filing of Decree of Dissolution.* In case the Shakopee Mdewakanton Sioux Community Court shall enter a decree dissolving a corporation, it shall be the duty of the Clerk of Court to cause a certified copy of the decree to be filed with the Clerk of Court. No fee shall be charged by the Clerk of Court for the filing thereof.

SECTION 59

59.0. *Deposit with the Shakopee Mdewakanton Sioux Community Court of Amount Due Certain Shareholders.* Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited with the Shakopee Mdewakanton Sioux Community Court and shall, upon *ex parte* petition, or such other proceeding as the Court deems proper, be paid over to such creditor or shareholder or to his legal representative upon proof satisfactory to the Court of his right thereto.

SECTION 60

60.0. *Survival of Remedy After Dissolution.* The dissolution of a corporation:

(1) by the issuance of a certificate of dissolution by the Clerk of Court, or

(2) by a decree of Shakopee Mdewakanton Sioux Community Court when the Court has not liquidated the assets and business of the corporation as provided in this Ordinance, or

(3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers, or shareholders, for any right or claim existing or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the

date of such dissolution. Any such action or proceeding be or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration.

SECTION 61

61.0. *Effect of Invalidity of Part of this Ordinance.* If the Shakopee Mdewakanton Sioux Community Court shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of this Ordinance, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this Ordinance as adjudged to be invalid or unconstitutional.

SECTION 62

62.0. *Effective Date.* This Ordinance shall be in full force and effect according to its terms from and after February 16, 1991.

SECTION 63

63.0. *Authority.* This Ordinance is enacted by the Shakopee Mdewakanton Sioux Community General

Council under the authority vested in said council by Section 1, Subsections e, h, k, and n of Article V of the Constitution and Bylaws of the Shakopee Mdewakanton Sioux Community as amended. The General council reserves the right to repeal or amend the provisions of this Ordinance, provided that such action to repeal or amend is approved upon a finding by the Shakopee Mdewakanton Sioux Community Court on an action for declaratory judgment, that such amendment or repeal is in the best interest of the Community. A corporation incorporated under or governed by this Ordinance is subject to this reserved right.

SECTION 64

64.0 *Corporation Contracts Preserved.* Otherwise lawful contracts and other obligations of any corporation shall not be impaired by any subsequent action of the Community or its General Council. No corporation wholly owned by the Shakopee Mdewakanton Sioux Community may be dissolved under Section 44 unless all contracts, debts and obligations of the corporation are first satisfied.

64.1 Actions to restrain any attempts to impair contracts of tribal corporations, or to declare such actions null and void, shall be available to any interested party in Shakopee Mdewakanton Sioux Community Court. If the court finds for the plaintiff in any such action, it shall award treble damages, including all costs, attorney fees and disbursements. Nothing in this Section 64.0 shall be construed to restrict the general application of law, or of this Ordinance to the acts and contracts of tribal corporations.

SECTION 65

65.0 *Fees.* The Clerk of Court may establish such fees for filing or amending corporation articles or bylaws, as may be reasonable and proper.

SECTION 66

66.0 *Consent of General Council Required for Creation of Corporations Wholly or Partially Owned by the Community.* The prior consent of the General Council shall be required, prior to the creation, under this Ordinance, of any corporation wholly or partially owned by the Community.

SECTION 67

67.0 *Remedies and Penalties.* The Shakopee Mdewakanton Sioux Community Court shall have the authority to determine, apply and enforce appropriate remedies and penalties, including, but not limited to, civil fines, for violations of this Ordinance, or of the Articles of incorporation or bylaws of any Corporation formed pursuant to this Ordinance. The remedies available to Corporations, their shareholders, and Members, shall include declaratory and injunctive relief, and special writs of *mandamus,* to compel actions necessary to secure the rights, obligations or privileges of such parties, whether or not those rights, obligations or privileges arise under this Ordinance. A prevailing Plaintiff in any action shall be awarded costs and reasonable attorneys fees.

SHAKOPEE MDEWAKANTON SIOUX COMMUNITY
2330 Sioux Trail N.W., Prior Lake, Minnesota 55372
Tribal Office (612) 445-8900
FAX: (612) 445-8906

(LOGO)

OFFICERS

STANLEY R. CROOKS
Chairperson

KENNETH ANDERSON
Vice Chairperson

DARLENE MATTA
Secretary/Treasurer

RESOLUTION 11-05-92-001

**AMENDMENT TO
THE SHAKOPEE MDEWAKANTON SIOUX
COMMUNITY CORPORATION ORDINANCE**

WHEREAS, the General Council of the Shakopee Mdewakanton Sioux (Dakota) Community is the governing body of the Community; and

WHEREAS, the General Council is empowered through Article V of the amended Constitution of the Shakopee Mdewakanton Sioux Community to promulgate and enforce ordinances intended to promote the general welfare of the Community by regulating the conduct of trade and the use and disposition of property upon the reservation; and

WHEREAS, the General Council has, in an exercise of this power, passed an ordinance, governing in all facets the formation, structure, operation and activities of corporations

chartered under the laws of the Shakopee Mdewakanton Sioux Community, which Ordinance is known as the Shakopee Mdewakanton Sioux Community Corporation Ordinance (Shakopee Corporation Ordinance), 2-27-91-0004; and

WHEREAS, the Shakopee Corporation Ordinance is for the most part sound law, however time and experience have shown the Ordinance to be deficient in certain crucial respects; and

WHEREAS, many of these deficiencies, particularly with regard to the Community's wholly owned corporation, have been noted by members of the General Council; and

WHEREAS, the General Council recognizes that the laws of the Community should first and foremost function in the best interests of the Community, and should protect the interests of the Community before the interests of all other parties; and

WHEREAS, the General Council has determined it to be in the best interests of the Community to address the deficiencies in the Shakopee Corporation Ordinance; and

WHEREAS, the General Council has determined that amendment of the Shakopee Corporation Ordinance is necessary to address the deficiencies so noted.

NOW THEREFORE BE IT RESOLVED, that the General Council hereby amends the Shakopee Corporation Ordinance, which amendment adds a number of sections to the Shakopee Corporation Ordinance as it is currently

enacted; and which amendment is a necessary measure undertaken to protect the interests of the Community, and which amendment is hereby declared to be in the Community's best interests, as follows:

AMENDMENT TO THE SHAKOPEE CORPORATION ORDINANCE

ADDITION OF SECTION 4.21 TO SECTION 4.

Section 4, General Powers.

4.21 Any and all interests in real property, whether of a tangible or intangible nature, which any corporation wholly or partially owned by the Community now possesses, or might in the future acquire by grant, gift, devise, loan, purchase, lease, or any other means may not be encumbered without the consent and prior written approval of a majority of the Members/shareholders of the Corporation.

The requirements of this section do not apply to the following actions when undertaken by the board of directors;

(1) Granting easements for any purpose deemed necessary by the board of directors; and

(2) Granting license, authorization or permission of any kind to any persons to enter onto the corporate property for any purpose.

ADDITION OF SECTION 4.22 TO SECTION 4.

4.22 No corporation wholly or partially owned by the Community may purchase any interest in real property, whether that property be of a tangible or intangible nature, without the consent and

prior written approval of a majority of the Members/shareholders of the Corporation.

ADDITION TO SECTION 38.

Section 38, Meetings of Shareholders and Members.

38.5 In the case of a corporation wholly or partially owned by the Community, the Articles of Incorporation shall specifically state the matters which may be raised by the Members/shareholders at either the regular or a special meeting.

The following matters shall always be considered to be properly before a regular or special meeting of the Members/shareholders, and may be raised by any Member/shareholder at any Members'/Shareholders' meeting, and it shall be unlawful for a corporation to exclude them from consideration by the Members/shareholders, either through the use of provisions in the corporate articles or bylaws or otherwise:

(a) Nomination and election of the directors;

(b) Consideration of the annual budget;

(c) Any sale of any corporate asset with a value in excess of $500,000;

(d) The formation of corporate subsidiaries;

(e) Purchase of another existing corporation by a Community owned corporation;

(f) The merger of a Community owned corporation with another Corporation, whether or not the second corporation is Community owned; and

(g) The amendment of the Articles of Incorporation or the corporate bylaws.

ADDITION TO SECTION 38.

38.6 The following actions may not be undertaken by the board of directors of a corporation wholly or partially owned by the Community without the consent and prior written approval of a majority of a quorum of the Members/shareholders at a regular or special meeting held for the purpose of obtaining such approval:

(a) Approval of the annual budget;

(b) Expenditures in excess of the levels approved in the annual budget;

(c) The sale of any corporate asset with a value in excess of $500,000;

(d) Merger of a Community owned corporation with another corporation;

(e) The formation of corporate subsidiaries;

(f) Purchase of another existing corporation by a Community owned corporation; and

(g) Amendment of the articles of incorporation or the corporate bylaws.

For the purposes of this section, (a) and (b) above, a quorum shall consist of 1/3 of the Members/shareholders of the corporation. For the purposes of this section, (c), (d), (e), (f), and (g) above, a quorum shall consist of a majority of the Members/shareholders.

ADDITION TO SECTION 38.

38.7 The Members/shareholders of any corporation wholly or partially owned by the Community may require the board of directors, by majority

vote of a quorum of the eligible voting Members/shareholders of the corporation, to take certain actions regarding any of the subjects in Sections 4.21, 4.22, 38.6, or 38.7 when deemed in the best interests of the corporation and the Community. For purposes of this Section, a quorum shall consist of 1/3 of the eligible voting Members/shareholders of the corporation.

ADDITION TO SECTION 22.

Section 22, Number and Election of Directors.

22.1 *Number and election of Directors of Community Owned Corporations.* A corporation wholly or partially owned by the Community shall be required to have no less than three directors. The initial directors may be named in the Articles of Incorporation. Subsequent directors will be nominated by the Members/shareholders at the annual meeting. The Members/shareholders will then vote on the nominees, and the nominees with the highest vote totals will serve for the next term.

The members of the board of directors of any corporation wholly or partially owned by the Community serving at the time of this amendment shall complete their present term of office as a director before their position shall be filled in accordance with the terms of this section.

ADDITION TO SECTION 26.

Section 26, Vacancies on the Board.

26.1 *Vacancies on the Board of Community Owned Corporations.* All vacancies on the board of a corporation wholly or partially owned by the

Community shall be filled by election at a special meeting of the corporation called for the purpose of filling the vacancy, at which all Members/shareholders shall be entitled to vote. The Members/shareholders shall nominate and vote on eligible persons to fill the vacancy, and the nominee with the highest vote total shall serve out the respective term of office.

ADDITION TO SECTION 13.

Section 13, Concerning the Articles of Incorporation and the Corporate Bylaws.

13.8 *Provisions Not Subject to Modification in the Articles or bylaws.* The following provisions of the Shakopee Corporation Ordinance, relating only to corporations wholly or partially owned by the Community, must be included in the Articles of Incorporation, and shall not be subject to modification in the corporate Articles or bylaws:

(a) Section 4.21, regarding encumbrances of real property;

(b) Section 4.22, regarding purchases of real estate;

(c) Section 22.1, regarding the selection of candidates for the board of directors and the election of directors to the board;

(d) Section 26.1, regarding the manner in which vacancies on the board of directors shall be filled;

(e) Section 38.5, regarding the matters which might properly be considered by the Members/shareholders at a Member's/shareholders' meeting;

(f) Section 38.6, regarding matters undertaken by the board of directors which will not be considered legitimate without prior approval by the Members/shareholders; and

(g) Section 38.7, regarding matters deemed to be in the Community's and the corporation's best interests, and which the board of directors must undertake upon approval by a majority vote of the Members/shareholders.

ADDITION TO SECTION 63.

Section 63, Authority.

63.1 *Effect of Future Amendments.* Any action to repeal or amend this Ordinance, when approved by the Shakopee Mdewakanton Sioux Community General Council, and upon the issuance of a declaratory judgment by the Mdewakanton Sioux Community Court that such amendment is in the best interests of the Community, shall have immediate full force and effect upon all corporations chartered under this Ordinance, whether in existence at the time of amendment or subsequently chartered.

CERTIFICATION

This Resolution was presented to the General Council of the Shakopee Mdewakanton Sioux Community at a meeting

held on 11/5, 1992. The vote on this Resolution was 33 for, 29 against, and 2 abstentions.

/s/ Glynn Crooks
Moved by

/s/ Cindy Picket
Seconded by

/s/ Stanley R. Crooks
Stanley R. Crooks,
Chairman

/s/ Kenneth Anderson
Kenneth Anderson,
Vice-Chairman

/s/ Darlene Matta
Darlene Matta, Secretary-Treasurer

CERTIFICATION

These Resolutions at the Special General Council Meeting November, 5, 1992; Resolution No. 11-05-92-001 was presented to the General Council of the Shakopee Mdewakanton Sioux Community at a Special General Council Meeting held on November 5, 1992.

There are 73 eligible voters pursuant to the voting list certified and posted by the Secretary/Treasurer on October 19, 1992.

To the best of my knowledge and belief, the results reported herein accurately reflect the vote of the General Council.

The vote on Resolution No. 11-05-92-001 Amendment to The Shakopee Mdewakanton Sioux Community Corporation Ordinance was:

33 FOR, 29 AGAINST, 2 ABSTENTIONS, 0 SPOILED

This Resolution PASSED X FAILED _

/s/ Stanley R. Crooks
Stanley R. Crooks,
Tribal Chairman

/s/ Kenneth Anderson
Kenneth Anderson,
Vice Chairperson

/s/ Darlene Matta
Darlene Matta,
Secretary/Treasurer

/s/ Randolph J. Schacht
Randolph J. Schacht,
Election Commissioner

SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

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PRIOR LAKE, MINNESOTA 55372
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(LOGO)

OFFICERS

Stanley R. Crooks
Chairman

Glynn A. Crooks
Vice Chairman

Susan Totenhagen
Secretary/Treasurer

RESOLUTION NO. 11-12-96-001
ENACTMENT OF TORT CLAIMS ORDINANCE

WHEREAS, the General Council of the Shakopee Mdewakanton Sioux (Dakota) Community is the governing body of the Community; and

WHEREAS, the General Council is empowered through Article V, Section 1(e) of the Constitution to manage the economic affairs of the Community; and

WHEREAS, the General Council is empowered through Article V, Section (h) of the Constitution to promulgate and enforce ordinances which are intended to safeguard and promote the peace, safety and general welfare of the Community; and

WHEREAS, the General Council has considered the need for a means to address tort claims brought against the Community or its entities; and

WHEREAS, the General Council is aware of the need to provide those persons and organizations that do business with or are guests of the Community and the Community's entities and instrumentalities with a forum for redress of their legitimate claims which may otherwise be barred due to the Shakopee Mdewakanton Sioux (Dakota) Community's sovereign immunity from suit; and

WHEREAS, the General Council has determined that the Community's insurers should pay compensation for damages suffered due to injury to or loss of property, or personal injury or death, where such losses or damages are caused by an act or omission of an employee of the Community while functioning within the scope of the duties of that person's office or employment, under those circumstances where the Community, if a private person, would be liable to the claimant.

NOW THEREFORE BE IT RESOLVED, that the Shakopee Mdewakanton Sioux (Dakota) Community hereby approves and adopts for enactment the attached Shakopee Mdewakanton Sioux (Dakota) Community Tort Claims Ordinance (the "Ordinance"), and directs that the same be forwarded to the Secretary of the Interior or his delegate for approval pursuant to the Constitution of the Community.

BE IT FURTHER RESOLVED, that the Shakopee Mdewakanton Sioux (Dakota) Community hereby waives its sovereign immunity from suit for the limited purpose

of permitting claims made against the Community pursuant to the Ordinance to be brought in Tribal Court, and to permit damages to be awarded against the Community to the extent provided for in Section 5 of the Ordinance, provided the damages are payable from the proceeds of an insurance policy.

/s/ Joe Brewer
Moved by

/s/ Danny Crooks
Seconded by

/s/ Stanley R. Crooks
Stanley R. Crooks,
Chairman

/s/ Glynn Crooks
Glynn Crooks, Vice-Chairman

/s/ Susan Totenhagen
Susan Totenhagen,
Secretary Treasurer

CERTIFICATION

Regular General Council Meeting of November 12, 1996

This Resolution No. 11-12-96-001 was presented to the General Council of the Shakopee Mdewakanton Sioux (Dakota) Community at a Regular General Council meeting held on November 12, 1996. There are 111 eligible voters pursuant to the voting list certified and posted by the Secretary/Treasurer on Sept. 11, 1996.

To the best of my knowledge and belief, the results reported herein accurately reflect the vote of the General Council at the meeting on November 12, 1996.

The Vote on Resolution No. 11-12-96-001 was:

38 For, 0 Against, 0 Spoiled, 2 Abstentions; and 1 Chair not voting

X Passed _Failed

/s/ Joe Brewer
Moved by

/s/ Danny Crooks
Seconded by

/s/ Stanley R. Crooks
Stanley R. Crooks,
Chairman

/s/ Glynn Crooks
Glynn Crooks, Vice-Chairman

/s/ Susan Totenhagen
Susan Totenhagen,
Secretary/Treasurer

/s/ Randolph J. Schacht
Randolph J. Schacht,
Election Commissioner

SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY TORT CLAIMS ORDINANCE

Section 1. Policy

It is the policy of the Shakopee Mdewakanton Sioux (Dakota) Community in the enactment of this Ordinance to exercise its retained inherent sovereignty to implement Community governmental powers, which powers are hereby declared by the Community to be of the same nature as all other Community sovereign powers, and which may be exercised by the Community pursuant to the provisions of the Shakopee Mdewakanton Sioux (Dakota) Community Constitution.

1.02. *Constitutional Authority.* The Constitution of the Shakopee Mdewakanton Sioux (Dakota) Community, Article V provides for the exercise of legislative powers by the Community acting through the General Council to further the economic advancement of the Shakopee Mdewakanton Sioux (Dakota) people. More specifically, this Ordinance is enacted by the Shakopee Mdewakanton Sioux (Dakota) Community General Council under the authority vested in said General Council by Section 1, Subsections (e), (h) and (l) of Article V of the Constitution of the Shakopee Mdewakanton Sioux (Dakota) Community as amended. The General Council reserves the right to repeal or amend the provisions of this Ordinance as necessary.

Section 2. Purpose

The Shakopee Mdewakanton Sioux (Dakota) Community enacts this Tort Claims Ordinance in order to provide those persons and organizations that do business with or

are guests of the Community and the Community's entities and instrumentalities with a forum for redress of their legitimate claims which may otherwise be barred due to the Shakopee Mdewakanton Sioux (Dakota) Community's sovereign immunity from suit. Therefore, the Community will pay compensation for damages suffered due to injury to or loss of property, or personal injury or death, where such losses or damages are caused by an act or omission of an employee of the Community while functioning within the scope of the duties of that person's office or employment, under those circumstances where the Community, if a private person, would be liable to the claimant.

Section 3. Definitions

(A) *Shakopee Mdewakanton Sioux (Dakota) Community* means the Community and all subentities thereof, whether governmental or commercial in nature, including, without limitation, the General Council, the Business Council, any committee or agency thereof, any corporate entity, the Tribal Court, and any other entity commissioned or created by the General Council (hereinafter collectively referred to as the "Community", unless noted otherwise), or by the Business Council.

(B) *Employee of the Community* means all elected officials, all officers, and all other persons employed by the Community.

(C) *Acting within the scope of office or employment* means execution by any employee of the Community of the duties, responsibilities, authorities, powers and functions

of employees in that person's position, whether acting in a governmental, business, professional, or other capacity.

Section 4. Waiver of Sovereign Immunity, Liability of the Community

(A) The Community hereby expressly waives its sovereign immunity from suit for the limited purpose of permitting claims made against the Community pursuant to this Ordinance to be brought in Tribal Court, and to permit damages to be awarded against the Community to the extent provided for in Section 5 herein, provided the damages are payable from the proceeds of an insurance policy. The Community will pay, from the proceeds of an insurance policy, compensation for injury to or loss of property, or for personal injury or death, caused by an act or omission of an employee of the Community while acting within the scope of office or employment, under circumstances where the Community, if a private person, would be liable to the claimant.

(B) The limited waiver of the Community's sovereign immunity from suit provided in paragraph A of this Section shall not extend to cases filed pursuant to this Ordinance in any jurisdiction other than the Shakopee Mdewakanton Sioux (Dakota) Tribal Court. The Community expressly retains its sovereign immunity from suit for all claims brought in all federal, state, and other tribal courts and in any federal, state, and tribal agency or administrative body. The Community further expressly retains its sovereign immunity from suit for those causes of action which are not covered by an insurance policy. Nothing contained herein shall prohibit the Community

from waiving its sovereign immunity to permit claims in excess of the amounts identified in Section 5 hereof, or to permit claims accruing prior to the date of this Ordinance, but only if such claims are heard in the Shakopee Mdewakanton Sioux (Dakota) Community Tribal Court.

(C) The remedies against the Community provided by this Ordinance, whether for damages or injury to or loss of property, or for damages awarded to compensate for personal injury or death caused by an act or omission of an employee of the Community while acting within the scope of office or employment, is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter, whether the claim is made against the employee whose act or omission gave rise to the claim, against the estate of such employee, or against the Community as the employer of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the Community, the employee or the employee's estate is precluded without regard to when the act or omission occurred. Double recovery is prohibited.

Section 5. Limits

The liability of the Community provided in Section 4 of this Ordinance shall not exceed two hundred fifty thousand dollars ($250,000) per claim, or one million dollars ($1,000,000) for multiple claims arising out of a single event or occurrence, exclusive of interest accruing prior to judgment, or punitive damages. The Community

retains the right, where limited circumstances may warrant, to waive its sovereign immunity for claims of a higher amount.

Section 6. Jurisdiction

The Shakopee Mdewakanton Sioux (Dakota) Tribal Court shall have original and exclusive jurisdiction to hear claims brought pursuant to this Ordinance, subject to the terms of the Ordinance, and all claims not brought in the Shakopee Mdewakanton Sioux (Dakota) Tribal Court shall be deemed invalid.

Section 7. Exclusions

Without intent to preclude the Shakopee Mdewakanton Sioux (Dakota) Tribal Court from finding additional cases where the Community and its employees should not, in equity and good conscience, pay compensation for injury to or loss of property, or for personal injury or death, the Community and its employees are not liable for the following losses:

(A) a loss caused by an act or omission of a Community employee exercising due care in the execution of a valid or invalid statute, rule, ordinance or resolution;

(B) a loss caused by the performance or failure to perform a discretionary duty, whether or not the discretion is abused;

(C) a loss in connection with the assessment and collection of taxes;

(D) a loss other than one sustained from injury to or loss of property, or from personal injury or death; and

(E) a loss based on the failure of a person to meet the standards needed for a license, permit, or other authorization issued by the Community, its employees or agents.

Section 8. Defenses

With respect to any claim under this Ordinance, the Community hereby expressly retains its sovereign immunity from suit except as such sovereign immunity would be inconsistent with the provisions of this Ordinance. The Community shall be entitled to assert any defense based upon judicial or legislative immunity which otherwise would have been available to the employee of the Community whose act or omission gave rise to the claim, as well as any other defenses to which the Community is entitled.

Section 9. Statute of Limitations

The statute of limitations for all claims brought against the Community is two (2) years and the right to bring a claim against the Community shall begin to accrue on the date of the act or omission giving rise to the claim, or on the date a reasonable person under the same or similar circumstances would have known of the injury, loss or other damages incurred as a consequence of the act or omission of the employee of the Community.

Section 10. Procedure

(A) An action shall not be instituted upon a claim against the Community for injury to or loss of property, or for personal injury or death, caused by an act or omission of any employee of the Community while acting within the scope of that person's office or employment, unless the claimant shall have first presented the claim to legal counsel of the Community.

(B) Legal counsel of the Community shall determine whether the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose.

(C) Upon certification by legal counsel that the defendant employee was acting within the scope of that person's office or employment at the time of the incident out of which the claim arose, the civil action or proceeding shall be deemed an action against the Community under the provisions of this Ordinance and the Community shall be substituted as the party defendant.

(D) In the event that legal counsel has refused to certify that the employee was acting within the scope of that person's office or employment at the time of the incident out of which the claim arose, the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of that person's office or employment. Upon such certification by the court, such action or proceeding shall be deemed to be an action or proceeding brought against the Community under the provisions of this Ordinance, and the Community shall be substituted as the party defendant.

(E) Nothing in this Section shall prevent a claimant from reaching a settlement with the legal counsel of the Community prior to instituting the procedure outlined in this Section.

Section 11. Indemnification of Community Employees

The Community shall indemnify and hold harmless its employees from and against any and all suits, demands, actions, losses, claims, damages, expenses, liabilities, cross-claims and counter-claims, of whatever nature, and costs (including reasonable attorneys' fees in defending against claims) related to, arising out of, based on, or in connection with performing duties within the scope of the employees job or office, where it is determined that the employee acted within their scope of employment or office. The Community is under no duty to indemnify those employees who have not been certified to have acted within the scope of employment or office.

Section 12. Settlement

(A) Legal counsel for the Community is authorized to determine, adjust and settle, at any time, any claim for money damages of $25,000 or less against the Community for injury to or loss of property, or for personal injury or death, caused by an act or omission of any employee of the Community while acting within the scope of office or employment, under circumstances where the Community, if a private person, would be liable to the claimant. The settlement is final and conclusive on all officers and employees of the Community, unless procured by fraud. The acceptance by the claimant of a settlement is final

and conclusive on the claimant and constitutes a complete release of any claim against the Community and the employee or officer of the Community whose act or omission gave rise to the claim, by reason of the same subject matter.

(B) Legal counsel for the Community is authorized to institute settlement discussions regarding any claim for money damages in excess of $25,000 and the Business Council of the Community shall have the authority, upon unanimous vote of all members thereof, to accept or reject a proposed settlement reached by the Community's legal counsel and the claimant(s).

Section 13. Attorney's Fees

No attorney licensed or admitted to practice before the Shakopee Mdewakanton Sioux (Dakota) Tribal Court may charge, demand, receive, or collect for services rendered, fees in excess of twenty-five (25) percent of any judgment rendered pursuant to this Ordinance or in excess of twenty (20) percent of any settlement made pursuant to this Ordinance. Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this Section shall be fined not more than $2,000 and shall lose her or his privilege to practice law before the Shakopee Mdewakanton Sioux (Dakota) Tribal Court.

Section 14. Subrogation

(A) Third parties such as insurance companies, guarantors, bonding companies and other similar organizations

shall be permitted to bring a claim pursuant to this Ordinance in the name of the claimant, provided, however, that such third party shall show that it is expressly permitted to bring a claim and that it has paid a debt to the claimant. No third party shall be entitled to receive compensation pursuant to this Ordinance in an amount greater than that already paid to the claimant. The Shakopee Mdewakanton Sioux (Dakota) Tribal Court may refuse to allow a third party to bring a claim pursuant to this Ordinance when equity so requires.

(B) The appropriate Community insurance carrier shall be permitted to defend on behalf of the Community a claim brought pursuant to this Ordinance.